UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 17, 1997

UNITED STATES OF AMERICA, Complainant, v. PEDRO DOMINGUEZ, Respondent.	)))) 8 U.S.C. §1324c Proceeding) OCAHO Case No. 96C00027)))

MODIFICATION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER OF ADMINISTRATIVE LAW JUDGE'S ORDER OF OCTOBER 17, 1997

On October 17, 1997, the Honorable Robert L. Barton, Jr., the Administrative Law Judge (ALJ) in the above-styled proceeding, issued an Order Partially Granting Complainant's Motion for Summary Decision (ALJ Order or October 17 Order) in a case alleging violations of section 274C(a)(1) and (2) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. §1324c(a)(1) and (2).[1]

Procedural History

On October 22, 1997, Complainant filed a motion requesting that the ALJ certify the ALJ's October 17 Order to the Chief Administrative Hearing Officer (CAHO) for administrative review. On October 29, 1997, the ALJ issued an order denying Complainant's motion.

[1]The version of Title 8 U.S.C. §1324c(a) applicable to the instant case (*see* discussion *infra* note 3) provides, in pertinent part, as follows:

> It is unlawful for any person or entity knowingly-
> (1) to forge, counterfeit, alter or falsely make any document for the purpose of satisfying a requirement of this chapter,
> (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter,

On October 29, 1997, Complainant filed a Request to the CAHO for Modifications of the Administrative Law Judge's Ruling on Complainant's Motion for Summary Decision.

In the October 17 Order, the ALJ found, among other things, that Respondent violated 8 U.S.C. §1324c(a)(1) by counterfeiting ninety-seven Forms I–94[2] referenced in paragraphs 1–23, 25–51, 53–59, 61–74, 76–87 and 90–103 of Count I of the Complaint, in violation of 8 U.S.C. §1324c(a)(1). ALJ Order, p. 26. The ALJ also found that Respondent forged the documents listed at Count I, paragraphs 2–3 and 25–28. *Id*. The ALJ denied Complainant's motion as to allegations that the Forms I–94 were altered or falsely made.

As to Count II of the Complaint, the ALJ found Complainant had shown that Respondent illegally provided the Forms I–94 referenced in paragraphs 3, 8, 12–13, 18–19, 25–26, 29–37, 43–49, 53–59, 64–67, 70–72, 76–77, 80, 83, 87, 90, 93–95, 98–100, and 103 in violation of 8 U.S.C. §1324c(a)(2). The ALJ therefore granted summary decision as to liability on those documents. *Id*. The ALJ denied summary decision as to Complainant's allegations that Respondent used, attempted to use, or possessed the documents.

With respect to Count II, the ALJ referred to a prior oral ruling on civil money penalties made during a pre-hearing conference in which he held that the version of 8 U.S.C. §1324c[3] applicable to this case only authorized imposition of a civil money penalty for each document used, accepted, or created and each instance of use, acceptance, or creation, but that it did not empower the imposition of penalties for "possessing" or "providing" documents. *Id*. at 3. The ALJ further ruled that §1324c does authorize imposition of a cease and desist order for possessing or providing documents. *Id.*

[2]A Form I–94 serves as evidence that an alien has complied with his or her duty under the INA to register with the Immigration and Naturalization Service (INS), 8 C.F.R. §264.1(b), and must be carried on an alien's person at all times as evidence of registration under section 264(e) of the INA. A Form I–94 endorsed for work authorization also serves as evidence of that authorization under section 274A of the INA. 8 C.F.R. §274a.2(b)(1)(v)(A)(4)(ii).

[3]The statute was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), enacted on September 30, 1996, subsequent to the events alleged in the complaint. *See infra* note 6. The ALJ ruled that the amendments made to section 274C of the INA by IIRIRA generally were not intended to be retroactive. ALJ Order, p. 2. In addition, he ruled that the definition of "falsely made" added by IIRIRA at section 274C(f) was not applicable. ALJ Order, p. 7. I concur with both rulings.

For the reasons set forth below, it is necessary to modify the ALJ's October 17, 1997 Order[4] with regard to:

(1) the determination that the ninety-seven counterfeit documents referenced in Count I were not falsely made,

and

(2) the ruling that the applicable version of 8 U.S.C. §1324c does not empower the imposition of civil money penalties for "possessing" or "providing" documents in violation of §1324c.

Administrative Review of the ALJs October 17, 1997 Order is Timely

In his October 29, 1997 Order denying Complainant's motion to certify the October 17, 1997 interlocutory order to the CAHO for review (Oct. 29 Order), the ALJ held such review was "inappropriate" because the request for review was untimely. Oct. 29 Order, pp. 11–12. Specifically, the ALJ indicated that he had orally ruled on both issues proposed for review during a July 30, 1997 pre-hearing conference, subsequently reduced to a written transcript, and he reiterated his ruling on one of these issues in a September 9 written order. *Id.* Thus, the ALJ reasoned that certification would be untimely under the OCAHO Rules of Practice and Procedure for Administrative Hearings (OCAHO Rules) because 28 C.F.R. §68.53(d)(1) limits CAHO review to the period within 30 days of the date of an ALJ's interlocutory order. *Id*.

The fact that the ALJ interpreted the statutes and OCAHO case law in the same way earlier in the procedural history of this case does not alter the fact that he reiterated the same reasoning and interpretation in the October 17 Order and that reasoning and interpretation were integral to his ruling on a dispositive motion in that October 17 Order. Thus, administrative review of these issues is appropriate and timely.

Discussion

1. *Falsely Made*

The ALJ's denial of the motion for summary decision, as to all paragraphs in Count I alleging that the Forms I–94 were falsely

[4]The Attorney General's authority to review an ALJ's decision and order is set out in 8 U.S.C. §1324c(d)(4) and delegated to the CAHO in 28 C.F.R. §68.53(a).

made, was based on the following application of two prior CAHO rulings:

> Since the statutory definition of "false making" is not applicable here, the question of whether these documents should be considered falsely made must be considered in light of the definition of "false making" in the CAHO rulings in *United States v. Remileh*, 5 OCAHO 724 (1995), 1995 WL 139207, and its progeny. Specifically, in *Remileh* the CAHO held that the term false making does not encompass false information on an I–9 form but, rather, it is the underlying fraudulent documents that is the proper basis of a section 1324c action. *Remileh*, 5 OCAHO 724, at 9, 1995 WL 139207, at *6. Further, in *United States v. Noorealam*, 5 OCAHO 797, at 3 (1995), 1995 WL, 714435, at *2, the CAHO explained that the *Remileh* ruling was not limited to the inclusion of false entries on I–9 forms, but rather, applied to the inclusion of false information on any genuine INS form. Thus, I am constrained by the CAHO's decisions in *Remileh* and *Noorealam* to conclude that it would not be proper to characterize the Respondent as having "falsely made" the I–94 forms.

ALJ Order, pp. 7–8 (footnote omitted).

The holdings of *Remileh* and *Noorealam* were misapplied in this case. *Remileh* held that "[t]he term 'falsely made' has repeatedly been held to refer to the *false execution* of a document, not a valid document containing false information." 5 OCAHO 724, at 5 (emphasis added). Similarly, *Noorealam* found that "[i]f one is dealing with a *genuinely executed* INS form that contains false information, it comes within the ambit of *Remileh*." 5 OCAHO 797, at 3 (emphasis added).

The Forms I–94 at issue in the instant case were not genuinely executed.[5] A genuinely executed Form I–94 must be issued by an INS office authorized to do so. *See*, 8 C.F.R. §264.1(b) and (h). Respondent admitted he had no authority to issue Forms I–94 and that he went to considerable trouble to make the documents in question look as if they were genuinely executed Forms I–94. ALJ Order, pp. 9–10. The resultant I–94s were not what they purported to be, i.e., documents

[5]As applied to written instruments, Black's Law Dictionary defines "genuine" as a term that means the [written instruments] "are truly what they purport to be, and that they are free from forgery or counterfeiting." Black's Law Dictionary 686 (6th ed. 1990). The Forms I–94 at issue here were not what they purported to be, i.e., forms issued by a duly authorized INS office. The ALJ concluded that the forms were counterfeit (ALJ Order, pp. 8–10), which is to say they were not genuine. Moreover, the forms were "executed," which has been defined as "Completed; carried into full effect; already done or performed; signed." Black's Law Dictionary 567 (6th ed. 1990). As was indicated in the October 17 Order with respect to each of the Forms I–94 at issue, "The form was thus completely filled out and appeared genuine." ALJ Order, p. 10.

issued by an authorized office of the INS. The documents had been falsely executed by Respondent.

The ALJ Order must therefore be modified to the extent that it holds the ninety-seven documents which Respondent counterfeited were not also falsely made. Summary Decision must be granted as to the allegations that the ninety-seven documents were falsely made.

2.Civil Money Penalties

The October 17 Order referenced the ALJ's prior holding that:

> [t]he pre-September 30, 1996 version of section 1324c only authorized imposition of a civil money penalty for each document used, accepted, or created and each instance of use, acceptance, or creation. It does not empower the imposition of penalties for "possessing" or "providing" documents.

ALJ Order, p. 3. However, the ALJ Order indicated in a footnote that "[t]he Act does authorize imposition of a cease and desist order for such violations." *Id.*

The provisions of the statute that were the focus of the ALJ's analysis were as follows:

> (a) Activities Prohibited
> It is unlawful for any person or entity knowingly-
> (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter,

8 U.S.C. §1324c(a)(2)

and

> (3) Cease and Desist Order with Civil Money Penalty
> With respect to a violation of subsection (a), the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in the amount of-
> (A) not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation,

8 U.S.C. §1324c(d)(3).

The ALJ evidently determined that because the words, "possess" and "provide" do not appear in §1324c(d)(3), there can be no civil

money penalty for knowingly possessing or providing fraudulent documents, notwithstanding the fact that §1324c(a)(2) makes such conduct a violation of the statute. This interpretation ignores other critical features of the language in §1324c(d)(3). The opening phrase, "With respect to a violation of subsection (a)," contemplates that what follows pertains to any and all violations of §1324c(a). Also, the transition clause "in the amount of ___" indicates that what is to follow is intended to set the penalty amounts or limits for each such violation. The fact that the language in §1324c(d)(3)(A) inartfully summarized the various violations set out in subsection (a) does not erase the intent in the opening language to subject each violation of subsection (a) to the civil penalty amounts that follow. [6]

It seems highly improbable that Congress could have intended, without so much as a hint in the legislative history, that several different kinds of conduct shall be considered violations of the statute but only a fraction of them shall be subject to a penalty.[7] The ALJ's strict literal interpretation of a isolated portion of the statute produces an unreasonable result that is plainly at variance with the policy of the legislation as a whole and with other language in the statute clearly evidencing an intention to subject all violations to a fine.

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[6]Section 212(c) of IIRIRA amended section 274C(d)(3)(A) of the INA by striking "each document used, accepted or created and each instance of use, acceptance or creation" and inserting "each document that is the subject of a violation under subsection (a)." This change was labeled as a "Conforming Amendment" and was clearly intended to conform section 274C(d) to the new violations added at section 274C(a)(5) and (6) by section 212(a) of IIRIRA. The fact that the Congress clarified the ambiguity in section 274C(d)(3)(A) in the process does not require us to adopt a narrow interpretation, that only focuses on the original language in that particular phrase, when a reasonable interpretation of *all* the applicable language in section 274C(d)(3) avoids a result that is at odds with the intent of the statute.

[7]Senator Alan Simpson, in introducing the legislative language that was ultimately codified at 8 U.S.C. §1324c saw it as a means of bolstering the effectiveness of employer sanctions by creating a "system of civil fines to deter users of fraudulent documents." *See Remileh*, 5 OCAHO 724, at 6 *citing* 136 Cong. Rec. S13629 (Sept. 24, 1990). Senator Simpson was particularly concerned about the "large numbers of false documents that now exist which can be used to fraudulently satisfy the employment authorization requirement of employer sanctions." *Id.* Given this motivation for the enactment of the immigration-related civil penalty document fraud statute, it defies logic to assume that the Congress intended (without saying so specifically) to lay out several different kinds of knowing actions with respect to fraudulent documents as violations in §1324(a)(2) ("use", "attempt to use," "possess," "obtain," "accept," "receive," and "provide") and yet penalize only "use" and "accept."

In addition, the ALJ's conclusion that the statute authorizes the imposition of a cease and desist order without a civil money penalty cannot be reconciled with the language of the statute. Section 1324c(d)(3) is captioned "Cease and Desist Order *with* Civil Money Penalty" (emphasis added). Furthermore, §1324c(d)(3) indicates that the ALJ's order "shall require [Respondent] to cease and desist from such violations *and* to pay a civil penalty..." (emphasis added).

The ALJ properly denied summary decision as to Complainant's request for specific civil penalties. As the ALJ noted, there are factual determinations to be made so that various factors can be properly considered in determining the appropriate civil penalties to be assessed. ALJ Order, pp. 25–26. However, the ALJ's Order must be modified to the extent it holds that civil penalties are not required for all violations of §1324c(a.). Both cease and desist orders and civil money penalties are to be imposed for each proven violation of 8 U.S.C. §1324c(a).

Accordingly,

For the above-stated reasons, the ALJ's October 17, 1997 Order is hereby MODIFIED in that:

(1) the ninety-seven documents listed at paragraphs 1–23, 25–51, 53–59, 61–74, 76–87 and 90–103 of Count I of the Complaint were falsely made in violation of 8 U.S.C. §1324c(a)(1),

and

(2) the applicable version of 8 U.S.C. §1324c requires the imposition of civil money penalties for "possessing" or "providing" documents in violation of §1324c.

It is so ordered, this 14th day of November, 1997.

JACK E. PERKINS
Chief Administrative Hearing Officer

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 17, 1997

UNITED STATES OF AMERICA, Complainant,	)
v.	) 8 U.S.C. §1324c Proceeding
	) OCAHO Case No. 96C00027
PEDRO DOMINGUEZ, Respondent.	)

ORDER PARTIALLY GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

I. *Procedural History*

Complainant filed a Motion for Summary Decision (Complainant's Motion)[1] on January 31, 1997.[2] After a series of motions regarding Respondent's request for an extension of time, Respondent filed a timely response to the Motion on March 20, 1997. A prehearing conference was held on April 1, 1997, concerning issues raised by Complainant's Motion, such as the possibility of the Complainant raising "uncharged misconduct" of the Respondent in an attempt to aggravate the civil penalty, or the legality of punishing Respondent

[1]The following abbreviations will be used throughout the Decision:

Complainant's Motion	Complainant's Motion for Summary Decision
C's Memorandum	Complainant's Points and Authorities in Support of its Motion
SUM	Complainant's Supplemental Memorandum of Law
R's Response	Respondent's Response to Complainant's Motion
R's Resp. to SUM	Respondent's Response to Complainant's SUM
PHC(1) Tr.	Transcript of the prehearing conference held April 1, 1997
PHC(2) Tr.	Transcript of the prehearing conference held July 30, 1997
PHCR	Prehearing Conference Report, issued August 12, 1997
CX	Complainant's exhibit
RX	Respondent's exhibit

[2]Pursuant to an Order dated February 4, 1997, Complainant was required to refile its motion with specific page citations and references and did so on February 19, 1997.

for both the counterfeiting of I–94 forms and their possession incident to creation. The conference spawned more briefings and other filings by both Complainant and Respondent. A second prehearing conference was then held on July 30, 1997.

Several issues already have been resolved by rulings made during the prehearing conferences. During the July 30 conference I considered the parties' contrasting positions as to the retroactive application of amendments to 8 U.S.C. §1324c made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, §212(b), 110 Stat. 3009 (hereinafter IIRIRA). Respondent argued for retroactive application, but Complainant contended the Immigration and Nationality Act (INA or Act) in existence at the time of the alleged violations (which were all prior to September 30, 1997) should be applied. After considering the parties' positions on this issue, I ruled that the amendments made to section 1324c by IIRIRA generally were not intended to be retroactive. PHC(2) Tr. at 38–42; *see also United States v. Davila*, 7 OCAHO 936, at 21 (1997), 1997 WL 602730, at *17–18. This interpretation is consistent with recent Supreme Court precedent on retroactive application of statutes. *See Lindh v. Murphy*, 117 S. Ct. 2059 (1997) (denying retroactive application to amendments to habeas corpus statute by Antiterrorism and Effective Death Penalty Act); *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

Complainant's motion seeks summary decision with respect to both counts of the Complaint as to liability and penalty. During the April 1, 1997, conference Respondent agreed that, except for the documents referenced in paragraphs 24, 52, 60, 75, 88 and 89 ("excepted documents"), there were no disputed factual issues that would preclude entry of summary decision for Complainant as to liability with respect to the allegations of count I. PHC(1) Tr. at 26–27. With respect to the other documents referenced in count I ("acknowledged documents"), Respondent acknowledged that he created them and had no authority from INS or any other government agency to do so. R's Response at 1. Therefore, I ruled that, but for the six "excepted documents" referenced in paragraphs 24, 52, 60, 75, 88 and 89, Respondent forged, counterfeited, altered and falsely made the documents listed in count I of the Complaint after November 29, 1990, for the purpose of satisfying a requirement of the Act knowing that such documents were forged, counterfeited, altered and falsely made. PHC(1) Tr. at 27. I deferred a ruling on the six documents

until further briefing from the parties was received. PHC(1) Tr. at 33, 100.

After receiving and reviewing the parties' further submissions, the Motion as to the six "excepted documents" referenced in paragraphs 24, 52, 60, 75, 88 and 89 was addressed during the July 30 conference. Respondent states that he did not counterfeit these six "excepted documents." *See* R's Response at 7. Rather, he contends, in an affidavit attached to his Response, that these are six valid, legal I–94 forms issued at various times to four different persons who worked as confidential informants and that these cards were returned to him by the informants in his capacity as a Border Patrol Agent which he failed to destroy or return to the issuing authority. RX–A–1. Even though Complainant may disagree, this sworn assertion raises a genuine disputed issue of material fact precluding summary decision. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *United States v. Tri Component Product Corp.*, 5 OCAHO 821, at 3 (1995), 1995 WL 813122, at *2. Complainant's Motion for Summary Decision as to the documents referenced in paragraphs 24, 52, 60, 75, 88 and 89 was based solely on Respondent's responses to Complainant's discovery requests.[3] However, given Respondent's revised responses to those discovery requests, I concluded that Respondent had not admitted a violation with respect to those paragraphs, and I found that there were genuine issues of material fact with respect to these documents. Consequently, I denied Complainant's Motion with respect to those paragraphs of count I. PHC(2) Tr. at 32.

With respect to the other documents referenced in count I, following the April 1, 1997, conference I considered the meaning of the

[3]During the April 1, 1997, Prehearing Conference, I asked Complainant to state the record evidence on which it relied to prove that the six "excepted documents" (Complaint ¶¶24, 52, 60, 75, 88, and 89) were forged, counterfeited, altered, or falsely made. PHC(1) Tr. at 27. In its response, Complainant referred to Respondent's original answer to interrogatory number 7, in which Respondent listed what he did to each document without "excepting" the six documents. PHC(1) Tr. at 27–29. Complainant asserts that this should be treated as an admission by Respondent that he forged, counterfeited, altered, or falsely made the six "excepted" documents. PHC(1) Tr. at 27, ll. 23–25. However, during the July 30, 1997, conference I accepted Respondent's amended answer denying that he forged, counterfeited, altered, or falsely made these six "excepted documents," and, since Complainant acknowledged that there was no other evidence that would establish a violation with respect to those six documents, PHC(2) Tr. at 31, I denied Complainant's Motion with respect to the paragraphs of count I referencing those documents. PHC(2) Tr. at 32.

statutory terms forge, counterfeit, alter and falsely make contained in section 1324c(a) in a decision issued in *United States v. Davila*, 7 OCAHO 936 (1997), 1997 WL 602730. Given the potential impact of the rulings in the *Davila* decision on this case, in the July 9, 1997, Notice of Prehearing Conference I advised the parties that I would revisit my April 1 ruling in *Dominguez*, and that the parties should be prepared to discuss whether Respondent's actions constituted forgery, counterfeiting, altering or falsely making as these terms were defined in *Davila*. This issue was addressed during the July 30 conference, PHC(2) Tr. at 23–31, but I deferred a decision until after I considered further briefing by the parties.

With respect to count II of the Complaint, I ruled that creation of documents in the counterfeiting process did not constitute "possession" as that term is used in 8 U.S.C. §1324(c). PHC(2) Tr. at 51. I further ruled that, even assuming that Complainant can show that Respondent "possessed" and/or "provided" the I–94 forms referenced in the complaint, the pre-September 30, 1996, version of section 1324c only authorized imposition of a civil money penalty for each document used, accepted, or created and each instance of use, acceptance or creation. It does not empower the imposition of penalties for "possessing" or "providing" documents.[4] PHC(2) Tr. at 52, 54.

Complainant was given leave to file a supplemental pleading and, on August 20, 1997, filed a Supplemental Memorandum (SUM).[5] On August 29, 1997, Respondent filed a response to the SUM as well as an amended answer to the Complaint, adding an affirmative defense of inability to pay the civil money penalty requested in the Complaint.

II. *Issues*

With respect to Complainant's Motion for Summary Decision, the unadjudicated issues remaining to be decided are as follows:

1. Whether the "acknowledged" I–94 documents referenced in count I of the Complaint were forged, counterfeited, altered or falsely made within the meaning of 8 U.S.C. §1324c(a)?

[4]The Act does authorize imposition of a cease and desist order for such violations.

[5]On September 9, 1997, I struck parts of the SUM because they addressed matters on which Complainant was not authorized to file and which either already had been adjudicated or were irrelevant.

2. Whether, as charged in count II of the Complaint, Complainant has shown that Respondent used, attempted to use, possessed and provided the I–94 documents in order to satisfy a requirement of the INA, in violation of 8 U.S.C. §1324c(a)(2)?

3. Whether Complainant is entitled to summary decision with respect to remedy as to any adjudicated liability issues?

III. *Standards for Summary Decision*

The rules governing motions for summary decision contemplate that the record as a whole will provide the basis for deciding whether to grant or to deny that motion. *See* 28 C.F.R. §68.38(c) (1996) (authorizing the ALJ to grant a motion for summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision"); *United States v. Tri Component Product Corp.*, 5 OCAHO 821, at 3 (1995), 1995 WL 813122 at *2 (Order Granting Complainant's Motion for Summary Decision) (noting that "[t]he purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact, as shown by the pleadings, affidavits, discovery, and any other judicially noticed matters").

The Rules of Practice and Procedure that govern this proceeding permit the Administrative Law Judge (ALJ or Judge) to "enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. §68.38(c) (1996). Although the Office of the Chief Administrative Hearing Officer (OCAHO) has its own procedural rules for cases arising under its jurisdiction, the ALJs may reference analogous provisions of the Federal Rules of Civil Procedure and federal case law interpreting them for guidance in deciding issues based on the rules governing OCAHO proceedings. The OCAHO rule in question is similar to Federal Rule of Civil Procedure 56(c), which provides for summary judgment in cases before the federal district courts. As such, Rule 56(c) and federal case law interpreting it are useful in deciding whether summary decision is appropriate under the OCAHO rules. *United States v. Aid Maintenance Co.*, 6 OCAHO 893, at 3 (1996), 1996 WL 735954 at *3 (Order Granting in Part and Denying in Part

Complainant's Motion for Partial Summary Decision) (citing *Mackentire v. Ricoh Corp.*, 5 OCAHO 746, at 3 (1995), 1995 WL 367112 at *2 (Order Granting Respondent's Motion for Summary Decision) and *Alvarez v. Interstate Highway Constr.*, 3 OCAHO 430, at 7 (1992)); *Tri Component*, 5 OCAHO 821, at 3 (citing same).

Only facts that might affect the outcome of the proceeding are deemed material. *Aid Maintenance*, 6 OCAHO 893, at 4 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)); *Tri Component*, 5 OCAHO 821, at 3 (citing same and *United States v. Primera Enters., Inc.*, 4 OCAHO 615, at 2 (1994) (Order Granting Complainant's Second Motion for Summary Judgment)); *United States v. Manos & Assocs., Inc.*, 1 OCAHO 877, at 878 (Ref. No. 130) (1989),[6] 1989 WL 433857 at *2–3 (Order Granting in Part Complainant's Motion for Summary Decision). An issue of material fact must have a "real basis in the record" to be considered genuine. *Tri Component*, 5 OCAHO 821, at 3 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)). In deciding whether a genuine issue of material fact exists, the court must view all facts and all reasonable inferences to be drawn from them "in the light most favorable to the non-moving party." *Id.* (citing *Matsushita*, 475 U.S. at 587 and *Primera*, 4 OCAHO 615, at 2).

The party requesting summary decision carries the initial burden of demonstrating the absence of any genuine issues of material fact. *Id.* at 4 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Additionally, the moving party has the burden of showing that it is entitled to judgment as a matter of law. *United States v. Alvand, Inc.*, 1 OCAHO 1958, at 1959 (Ref. No. 296) (1991), 1991 WL 717207 at *1–2 (Decision and Ordering [sic] Granting in Part and Denying in Part Complainant's Motion for Partial Summary Decision) (citing *Richards v. Neilsen Freight Lines*, 810 F.2d 898 (9th Cir. 1987)). After the moving party has met its burden, "the opposing party must then come forward with 'specific facts showing that there is a genuine issue for trial.'" *Tri Component*, 5 OCAHO 821, at 4 (quoting Fed. R. Civ. P. 56(e)). The party opposing summary decision may not "rest

[6]Citations to OCAHO precedents in bound Volumes I-III, *Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practices Laws of the United States*, reflect consecutive decision and order reprints within those bound volumes; pinpoint citations to pages within those issuances are to specific pages, seriatim, of the pertinent volume. Pinpoint citations to OCAHO precedents in volumes subsequent to Volume III, however, are to pages within the original issuances.

upon conclusory statements contained in its pleadings." *Alvand*, 1 OCAHO 1958, at 1959 (citing *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538 (9th Cir. 1988)). The Rules of Practice and Procedure governing OCAHO proceedings specifically provide:

> [w]hen a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

28 C.F.R. §68.38(b) (1996).

Under the Federal Rules of Civil Procedure, the court may consider any admissions as part of the basis for summary judgment. *Tri Component*, 5 OCAHO 821, at 4 (citing Fed. R. Civ. P. 56(c)). "Similarly, summary decision issued pursuant to 28 C.F.R. Section 68.38 may be based on matters deemed admitted." *Id.* (citing *Primera*, 4 OCAHO 615, at 3 and *United States v. Goldenfield Corp.*, 2 OCAHO 162, 164–65 (Ref. No. 321) (1991), 1991 WL 531744 at *2–3 (Order Granting in Part and Denying in Part Complainant's Motion for Summary Decision)). *See also Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560, 565 (5th Cir. 1995) (stating that a "moving party need not support its motion [for summary judgment] with affidavits or other evidence, but to defeat [such] a motion . . . the nonmovant must present evidence sufficient to establish the existence of each element of his claim as to which he will have the burden of proof at trial. We view this evidence, and the inferences to be drawn from it, in the light most favorable to the nonmovant.") (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *White v. United Parcel Service*, 692 F.2d 1, 3 (5th Cir. 1982) ("A party opposing a motion for summary judgment must meet the moving party's affidavits with opposing affidavits or other competent evidence setting forth specific facts to show that there is a genuine issue of material fact for trial.") (citation omitted).

IV. *Analysis and Rulings*

A. *Count I Liability*

During the April 1, 1997, prehearing conference, I granted Complainant's Motion as to count I, paragraphs 1–23, 25–51, 53–59, 61–74, 76–87, and 90–103. PHC(1) Tr. at 27. The ruling specifically stated that Respondent "forged, counterfeited, altered and falsely

made the documents listed in the Complaint in count I after November 29, 1990, for the purpose of satisfying a requirement of the Immigration and Naturalization (sic) Act, knowing that such documents were forged, counterfeited, altered, and falsely made." *Id.*

However, following the April 1, 1997, conference, I had occasion to consider the meaning of these statutory terms in another decision, *United States v. Davila*, *supra*, in which I construed the meaning of forge, counterfeit, alter and falsely make as used in section 1324c. Therefore, as part of the July 30 conference, the issue of the meaning of the statutory language was discussed. After considering the parties' arguments, I now conclude that my earlier ruling must be modified.[7] To that end, a discussion of the statutory language is appropriate.

1. *Falsely Make*

A definition of "falsely made" was added to IRCA by the amendments that went into effect on September 30, 1996. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, §212(b), 110 Stat. 3009 (codified at 8 U.S.C. §1324c(f)). Thus, the initial question when considering a definition of "false making," is whether the statutory version of the definition applies here. This question was first discussed in *United States v. Davila*, 7 OCAHO 936, at 21 (1997), 1997 WL 602730, at *17–18 (discussing retroactivity of 8 U.S.C. §1324c(f) and distinguishing between "applications" and "documents").

The statutory definition of "falsely made" is not applicable here, since the statutory provision applies retroactively only to documents that are *applications*. *See Davila*, 7 OCAHO 936, at 21, 1997 WL 602730, at *17–18. An I–94 form states that it is an "arrival/departure *record*" (emphasis added). Nowhere on the form does it state that it is an application. Indeed, both parties agree that an I–94 form is not an "application," as that term is used in the 1996 Act. PHC(2) Tr. at 5–6. Since the statutory definition of "falsely make" in 8 U.S.C. §1324c(f) added by the 1996 Act is retroactive

[7]Although Respondent admits the factual allegations of count I of the Complaint, he denies that he counterfeited, altered, forged, or falsely made the documents listed in count I. *See* Third Amended Answer ¶5. In essence, Respondent admits the facts of this case, but denies their legal effect. It is within Respondent's rights to take this position, as it is for this Court to decide the legal effect of Respondent's actions.

only with respect to "applications," that statutory definition has no applicability here.

While it is clear that an I–94 form is not an "application," it most certainly is a "document," within the meaning of section 1324c(f).[8] Since the statutory definition of "false making" is not applicable here, the question of whether these documents should be considered falsely made must be considered in light of the definition of "false making" in the CAHO's rulings in *United States v. Remileh*, 5 OCAHO 724 (1995), 1995 WL 139207, and its progeny. Specifically, in *Remileh* the CAHO held that the term false making does not encompass false information on an I–9 form but, rather, it is the underlying fraudulent documents that is the proper basis of a section 1324c action. *Remileh*, 5 OCAHO 724, at 9, 1995 WL 139207, at *6. Further, in *United States v. Noorealam*, 5 OCAHO 797, at 3 (1995), 1995 WL 714435, at *2, the CAHO explained that the *Remileh* ruling was not limited to the inclusion of false entries on I–9 forms, but, rather, applied to the inclusion of false information on any genuine INS form.[9] Thus, I am constrained by the CAHO's decisions in *Remileh* and *Noorealam* to conclude that it would not be proper to characterize the Respondent as having "falsely made" the I–94 forms. Therefore, summary decision is denied as to that allegation of the complaint.

2. *Alter*

As defined in *Davila*, "alter" differs from both "counterfeit" and "forgery." Federal courts typically refer to conventional and legal dictionaries when defining this term. *See, e.g.*, *Hallauer v. United States*, 40 C.C.P.A. 197, 201 n.1, 1953 WL 6138, at **3 n.1 (1953) (using Webster's); *Border Brokerage Co. v. United States*, 43 Cust. Ct.

[8]I have previously found that a Social Security Card is a "document" for section 1324c(f) purposes. *Davila*, 7 OCAHO 936, at 21, 1997 WL 602730, at *17–18. I also find that an I–94 form is likewise best characterized as a "document." According to 8 C.F.R. §270.1, a document is an instrument on which is recorded, by means of letters, figures or marks, matters which may be used to fulfill "any requirement of the Act." The word document includes, but is not limited to an "application." *Id*. An I–94 is specifically tailored towards satisfying requirements under this Act, so in view of the regulations, the form should be viewed as a document.

[9]As I have noted previously, "'falsely made' stands as a broader characterization of [a 1324c violation], particularly *where the means employed are not specifically known*." *Davila*, 7 OCAHO 936, at 26, 1997 WL 602730, at *22 (citation omitted) (emphasis added). Here, Respondent clearly has described the manner in which he created the I–94 forms. CX–VV–144–256; C's Memorandum at 15–22.

226, 229, 1959 WL 8914, at **3 (1959) (using same); *Turner v. United States*, 707 F. Supp. 201, 205 (W.D.N.C. 1989) (using Random House College Dictionary); *Piantone v. Sweeney*, 1995 WL 590311, at *8 n.14 (E.D. Pa. Oct. 4, 1995) (using Black's Law Dictionary). As defined in *Piantone*, "alter" means "[t]o make a change in; to modify; to vary in some degree; to change some elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially." *Id.* (quoting Black's Law Dictionary 77 (6th ed. 1990)).

Case law suggests that "alter" and "modify" are interchangeable terms. In *MCI Telecomm. Corp. v. AT&T Co.*, 512 U.S. 218 (1994), the Court looked to the Random House Dictionary of the English Language, Webster's Third New International Dictionary, and Black's Law Dictionary in defining the term, "modify." *Id.* at 225. In *each* dictionary, the words "alter" and "modify" are intertwined. *Id.* "Modify" is typically defined as "[t]o alter; to change in incidental or subordinate features; enlarge; extend; amend; limit; reduce." *Id.* (quoting Black's Law Dictionary 1004 (6th ed. 1990)). While the Fifth Circuit has not explicitly defined "alter," two United States Bankruptcy Courts in the Fifth Circuit, utilizing Black's Law Dictionary, have equated the words "alter" and "modify." *In re Dixon*, 151 B.R. 388, 393 n.6 (S.D. Miss. 1993) (defining modify as "to alter"); *In re Schum*, 112 B.R. 159, 161 (N.D. Tex. 1990) (defining modify using American College Dictionary as "to change somewhat . . . *alter*") (emphasis added). Thus, an altered document is one that is changed "partially" without "substituting an entirely new thing" or "destroying the identity of the thing affected." *See Piantone*, 1995 WL 590311, at *8 n.14. Since Respondent's activities did not change items on an already completed I–94, but rather involved filling in blank forms, it would not be accurate to characterize Respondent's actions as having "altered" the I–94 forms. Therefore, the evidence does not support Complainant's allegation that Respondent altered the I–94 forms within the meaning of section 1324c, and summary decision is denied as to that allegation of the complaint.

3. *Counterfeit*

As noted previously, I denied summary decision with respect to paragraphs 24, 52, 60, 75, 88 and 89 because of a factual dispute between the parties as to the legitimacy of the I–94 forms referenced in the Complaint, but I ruled for Complainant as to the other, non-

disputed documents. The Table in the SUM prepared by Complainant suggests there may be six additional I–94 forms that were not counterfeit, namely those referenced in complaint paragraphs 7, 11, 15–17, and 74. Indeed, Complainant's own exhibits, which are listed in the Table of the SUM on pages 15–20, suggest that these documents are not, or might not be, counterfeit. For example, CX–RR–83 states that the I–94 form for Camacho-Rosales (CX–I–13), referenced in paragraph 7 of the Complaint, is a legitimate I–94 form unrelated to counterfeiting. Similar notations are made for the I–94 forms for De Anda-Perez (CX–I–33) and Pineda-Gomez (CX–I–147), referenced in Complaint paragraphs 17 and 74, respectively. Also, the statements regarding the I–94 forms for Cervantes-Palacious (CX–I–21), E. Davila-Gonzalez (CX–I–29), and J. Davila-Gonzalez (CX–I–31), referenced in Complaint paragraphs 11, 15, and 16, respectively, reveal that the relevant evidence packets contain legitimate unrelated I–94s and practice counterfeit I–94s without photos. *See* CX–QQ–54.[10] If one accepted these references at face value, the logical conclusion would be that these six I–94 documents were not or might not be counterfeit.

Respondent, however, did not include the I–94 forms referenced by Complaint paragraphs 7, 11, 15–17, and 74 among the excepted documents. Moreover, in his Response to Complainant's Motion, Respondent admitted that he created 97 of the I–94 documents that are the subject of the lawsuit ("acknowledged documents"), and that he had no authority from INS or any government agency to create these documents. R. Response at 1. In his affidavit attached to the Response, Respondent states that he personally created 97 of the 103 I–94 forms. Finally, in his Third Amended Answer to the Complaint, which was served as recently as August 29, 1997, but for the six "excepted documents," Respondent expressly admits the factual allegations of count I (although he denies that the factual allegations amount to proof that he "counterfeited, altered, forged or falsely made" the documents in question). Given the recency of the Third Amended Answer and Respondent's Response to the Motion, I conclude that, to the extent that Respondent previously may have

[10]It is a well established principle of summary judgment adjudication that even if both parties agree that no factual issues exist, the Court may disagree and can find that summary judgment is inappropriate because factual issues do exist and that a trial is necessary to resolve those issues. That is true even when (which is not the case here) cross motions for summary judgment have been filed. *See McKenzie v. Sawyer*, 684 F.2d 62, 68 n.3 (D.C. Cir. 1982); *United States v. Fred A. Arnold, Inc.*, 573 F.2d 605, 606 (9th Cir. 1978).

contended that other documents were legitimate, he has now admitted the factual allegations of count I but for the six "excepted documents" in paragraphs 24, 52, 60, 75, 88, and 89.

Although he admits that he created the "acknowledged documents" for purposes unrelated to his legitimate work duties, Respondent contends they were not "counterfeit," citing *Davila* for the proposition that "counterfeiting" would necessarily involve a wholly created false document. According to Respondent, the I–94 forms "were based on an INS form obtained from the Government Printing Office, and they are simply filled in in the same way that I think a check can be counterfeited if it is wholly created by the offender." PHC(2) Tr. at 25.

Respondent engaged in extensive methodology in his activities surrounding the I–94s. *See* Complainant's Memorandum of Points and Authorities in Support of Complainant's Motion for Summary Decision at 14–23 (C's Memorandum) (summarizing admissions made during Respondent's deposition). With the exception of obtaining the needed raw materials from various sources, such as blank I–94 forms from the Government Printing Office, buying stamps from various custom stamp vendors, etc., Respondent created each I–94 himself. Respondent either wrote or typed the necessary information on an I–94 form, glued or stapled a photo to the form, and stamped the form. CX–VV–163–171. The form was thus completely filled out and appeared genuine. Therefore, since the I–94 forms were "manufactured" documents, Respondent's activity would appear to be fairly characterized as "counterfeiting."[11] *See Davila*, 7 OCAHO 936, at 25, 1997 WL 602730, at *21.

The I–94 forms were generally filled out with information supplied by intermediaries. *See* CX–VV–243–244. The forms contained the names, birth dates, and country of origin of the individuals ordering fraudulent I–94 forms. *Id.* Finally, there is nothing in the record to suggest that the individuals provided false names and

[11]Counterfeited has been defined as meaning imitated, simulated, feigned or pretended, and "[a] counterfeit must be of such falsity as to fool an honest, sensible, and unsuspecting person of ordinary observation and care." *United States v. Ross*, 844 F.2d 187, 189 (4th Cir. 1988); *see also United States v. Turner*, 586 F.2d 395, 397 (5th Cir. 1978). No matter the precise origin of the raw material used by the Respondent, the outcome was the creation of I–94 forms that appeared to be valid, but that instead contained significant false information provided by Respondent.

birth dates to the intermediaries.[12] On the one hand, much of the information contained on each I–94 was true and correct. However, each form also lists a stated purpose or reason for entering the United States, which was false.[13] Moreover, nearly every form also bore a stamp of "employment authorized," which was also false. Thus, each I–94 form submitted was fraudulent, as the entry reasons and work authorization listed on each form were fictitious, rendering each I–94 invalid.

Applying relevant Fifth Circuit case law, Respondent's activities would fairly be characterized as "counterfeiting." *See United States v. Sultan*, 115 F.3d 321, 325 (5th Cir. 1997) (noting that under counterfeiting statute, a "counterfeit mark" is defined as a spurious mark likely used for the purposes of mistake or confusion); *United States v. Yamin*, 868 F.2d 130, 132, 134 (5th Cir. 1989) (upholding conviction of defendants for selling "counterfeit watches" where court noted that it was only "the writing on the watch[es] that makes [them] counterfeit," and finding no error in trial judge's instruction that a counterfeit mark is one that is "likely in the future to cause either . . . mistake, or deception of the public in general."); *United States v. Turner*, 586 F.2d 395, 397 (5th Cir. 1978). *Cf. United States v. Brewer*, 835 F.2d 550, 553 (5th Cir. 1987) (describing telephonic access codes as "counterfeit" due to their "fictitious" nature); *United States v. Wyatt*, 611 F.2d 568, 569 (5th Cir. 1980). The I–94 forms filled out by Respondent were fictitious insofar as they contained false information as to the reasons behind their bearers' entry into the United States and work status. Indeed, the documents would not have served their purported purposes were it not for Respondent's "spurious marks" and writings that "caused deception." *See Sultan*, 115 F.3d at 325; *Yamin*, 868 F.2d at 132.

OCAHO case law also tends to support a finding that Respondent counterfeited the "acknowledged documents." "A counterfeit must be of such falsity as to fool an honest, sensible, and unsuspecting person of ordinary observation and care." *Davila*, 7 OCAHO 936, at 25, 1997 WL 602730, at *21 (quoting *United States v. Smith*, 318 F.2d 94, 95 (4th Cir. 1963)); *see also United States v. Jaque*, 6 OCAHO 823, at 6–7 (1995), 1995 WL 848946, at *5. In *Jaque,* count II of the

[12]Indeed, many buyers of I–94 forms returned the forms in order to have Respondent correct name errors on the forms. *See, e.g.*, CX–RR–85–87.

[13]Typically, the reason centered on emergency conditions and were thus labeled "Emergent X," or "Humanitarian reasons" on each I–94.

complaint alleged that the respondent had falsely made and counterfeited an I–9 form. The Judge concluded that he had to dismiss sua sponte the allegation of false making on the basis of the CAHO's rulings in *Remileh*, 5 OCAHO 724, at 2–3 and *Noorealam*, 5 OCAHO 797, at 5. *See Jaque*, 6 OCAHO 823, at 6–7, 1995 WL 848946, at *5. However, because the complaint also alleged that the respondent had counterfeited the form, the Judge ruled that the complainant was entitled to assert liability for counterfeiting, based on the inclusion of false information on the forms, because the complaint did assert a claim upon which relief may be granted with respect to the allegation that the card was counterfeit.

Another case having significant bearing on the instant matter is *United States v. Moreno-Pulido*, 695 F.2d 1141 (9th Cir. 1983). In that case, the defendant was found to have obtained uncut, blank sheets of green card forms. *Id.* at 1143. The defendant both sold blank sheets of forms and completed forms. *Id.* The blank forms lacked identifying information, signatures, photographs, or lamination. *Id.* Evidence adduced at trial revealed that sometimes the defendant delivered a completed "counterfeit" green card to an intermediary within twenty minutes of the time of the intermediary's request and provision of a photograph and other information. *Id.* at 1146 (quotation denotes Court's characterization of documents). A search of the defendant's bedroom revealed other equipment and supplies necessary for the "counterfeiting" of green cards (quotes denote Court's view of process of filling out blank green cards). *Id.* The *Moreno* court found that "[a] blank green card form is unalterably dedicated to use as a counterfeit." *Id.* at 1144. Likewise, the court noted that the process of "creating" a green card constituted counterfeiting. The court, citing authority mentioned in *Davila* and the cases cited therein, noted that "the proper test to be applied is whether the fraudulent obligation bears such a likeness or resemblance to any of the genuine obligations or securities issued under the authority of the United States as is calculated to deceive an honest, sensible and unsuspecting person of ordinary observation and care." *Id.* (citations omitted). Thus, when taken with *Davila*, it appears within the realm of OCAHO precedent to find a counterfeiting violation under 8 U.S.C. §1324c(a)(1) where the form itself is not entirely "created" by the Respondent.

In *United States v. Blakey*, 960 F.2d 996 (11th Cir. 1992), the defendant was convicted under a counterfeiting statute for altering a check for five dollars to resemble a cashier's check for thirty-five

thousand dollars. The applicable statute, 18 U.S.C. §513, defined "counterfeit" to be "a document that purports to be genuine but is not, because it has been . . . manufactured in its entirety." *Blakey*, 960 F.2d at 999. The *Blakey* court found that because all essential information of the check was falsified, the check was properly characterized as "counterfeit."[14] *Id.* at 1000.

Although the *Dominguez* case falls within the appellate jurisdiction of the Fifth Circuit, and *Blakey* and *Moreno* were issued by circuit courts other than the Fifth, those decisions nevertheless are not contrary to Fifth Circuit case law and I find their findings and analysis highly persuasive. In light of the above cited cases and authority discussing the meaning of "counterfeiting," including the decision of this Court in *Davila*, the Respondent's actions in this matter constituted counterfeiting. I find compelling the fact that the I–94 forms would have been worthless to their bearers without a reason for entering the United States listed on the face of the forms and a positive work authorization stamp. A false birth date, or perhaps even false names, would not have been particular problems for the bearers of false I–94 forms, as much as an inaccurate or ineffective "purpose" for entry listing. Thus, the *Blakey* court makes clear that a document may be considered to be counterfeit if all the essential information is false. Therefore, I find that the Respondent counterfeited the documents referenced in paragraphs 1–23, 25–51, 53–59, 61–74, 76–87, and 90–103.

4. *Forge*

With respect to the issue of whether these I–94 documents were forged, most of the I–94 forms at issue were not signed, either by the illegal aliens or Respondent. As noted in *Davila*, Fifth Circuit case law centers on signatures as a central element of forgery. *See, e.g.*, *United States v. Taylor*, 869 F.2d 812, 814 (5th Cir. 1989) (noting that the relevant statute prohibits false endorsements or signatures);

[14]In discussing the meaning of the statutory terms "forge," "alter," and "counterfeit," the *Davila* decision states, citing *Piantone*, that "in contrast to a forged document which contains a false endorsement or signature, or a counterfeited document which is manufactured in its entirety, an altered document is one that . . . is changed 'partially' without 'substituting an entirely new thing' or 'destroying the identity of the thing affected.'" *Davila*, 7 OCAHO 936, at 26, 1997 WL 602730, at *22. Based on my review of *Blakey* and the other relevant case law, I disavow any dicta in *Davila* that suggests that, to be considered "counterfeit," a document must be manufactured in its entirety by the counterfeiter.

United States v. Hall, 845 F.2d 1281, 1284 (5th Cir. 1988) (affirming conviction for forgery where defendant fraudulently endorsed check); *United States v. Cavada*, 821 F.2d 1046, 1047–48 (5th Cir. 1987) (discussing forgery in terms of false signatures or endorsements); *French v. United States*, 232 F.2d 736, 738 (5th Cir. 1956) (affirming forgery conviction where defendant signed name of another with intent to defraud); *see also United States v. Hagerty*, 561 F.2d 1197, 1199 (5th Cir. 1977) (rejecting finding of forgery since defendant *did not sign* another's name to an instrument and rejecting the argument that "forgery" and "falsely made" are synonymous terms). Thus, the thrust of the controlling case law from the Fifth Circuit ties forgery to false signatures or endorsements. Applying that case law to section 1324c, only documents that contain a false signature or endorsement would be considered as forged, as that term is used in the statute.

In this case, with respect to the I–94 documents that were not signed, I conclude that it would not be proper to characterize Respondent's actions as a "forgery." However, as was brought to the Court's attention during the July 30 prehearing conference, six I–94 forms (which are referenced in paragraphs 2–3 and 25–28 of count I of the Complaint) bear the forged signature of District Director Richard Casillas.[15] It is apparent that this signature is the result of a signature stamp. *See* CX–I–3, CX–I–5, CX–I–49, CX–I–51, CX–I–53, CX–I–55. Using a signature stamp instead of a false signature to induce action is no less a forgery than the traditional model. *See United States v. Hord*, 6 F.3d 276, 285 (5th Cir. 1993) (citing and following *United States v. Falcone*, 934 F.2d 1528, 1540 (11th Cir.), *reh'g granted and opinion vacated*, 939 F.2d 1455 (11th Cir. 1991), *opinion reinstated on reh'g*, 960 F.2d 988 (11th Cir.) (en banc), *cert. denied*, 506 U.S. 902 (1992) (finding that the unauthorized use of a signature stamp constituted an affirmatively false representation that the signatures represented were authorized and that such a use constituted forgery)). With respect to the six documents referenced in paragraphs 2, 3, and 25–28 of count I of the Complaint, Respondent forged the signature of Richard Casillas. Thus, I modify my earlier ruling made on April 1, 1997, to hold that Respondent vi-

[15]Pursuant to 28 C.F.R. §68.41, I take official notice of the fact that Richard Casillas was the District Director of the INS in San Antonio when the I–94 forms referenced in paragraphs 2–3 and 25–28 were created. If either party believes that this finding is incorrect, pursuant to 28 C.F.R. §68.41, it must file, not later than November 3, 1997, a pleading showing why the contrary is true. Otherwise, I will consider the lack of an objection as acceptance of this fact finding.

olated 8 U.S.C. §1324c(a)(1) by forging only the six above-discussed documents.

5. *Conclusion*

With respect to count I, I conclude that Complainant has failed to show that Respondent "altered" or "falsely made" the 103 documents referenced in count I. However, Complainant has shown that Respondent "counterfeited" all of the documents referenced in count I, except for the six I–94s referenced in paragraphs 24, 52, 60, 75, and 88–89. Finally, I conclude that Complainant also has shown that the I–94 forms referenced in paragraphs 2, 3, and 25–28 of count I of the Complaint were forged.[16]

B. *Count II Liability*

1. *Factual Evidence and Legal Standard*

Count II of the Complaint alleges that Respondent used, attempted to use, possessed and provided the same I–94 forms referenced in count I, knowing that they were counterfeit, forged, altered and falsely made, in violation of 8 U.S.C. §1324c(a)(2). Although the Complaint is phrased in the conjunctive, the statute is phrased in the disjunctive, and only one of the elements needs to be proven.

There are six elements that Complainant must prove to establish liability under section 1324c(a)(2); namely that Respondent: (1) knowingly (2) used, or attempted to use, possessed or provided (3) a forged, counterfeit, altered or falsely made (4) document (5) after November 29, 1990 (6) in order to satisfy any requirement of this chapter. *See* PHC(2) Tr. at 43. The issue is whether the Complainant, as proponent of the Motion, has established all these elements.

All but eight of the 103 I–94 forms referenced in the Complaint were seized by the government during the search of Respondent's home on September 24, 1993, the day after his arrest. C's Memorandum at 34 (citing CX–A–7–12, CX–H–1–8, CX–I–1–106,

[16]Although this ruling differs from the summary decision ruling I issued during the April 1, 1997, conference, that ruling only partially adjudicated the motion for summary decision and no final decision was rendered in the case at that time. A judge continues to exercise jurisdiction over a proceeding until a final order is issued. Upon further review of the factual record and applicable legal precedent, justice requires that a modified ruling be issued.

CX–VV–256 ll. 15–25, CX–VV–257 ll. 1–19). At the time of Respondent's arrest on September 23, 1993, the government obtained two of the I–94s at the residence of Respondent's accessory, Julian Banda. *Id.* at 34 n.5 (citing CX–A–7, CX-F–1). Six other forms were seized by government officials at various ports of entry. *Id.* at 34 n.5 (citing CX–A–7, CX–B–1, CX–C–1–5, CX–F–1, CX–A–13, CX–BB–1, CX–CC–1, CX–DD–1–2, CX–EE–1, CX–FF–1, CX–GG–1, CX–HH–1–2, CX–II–1, CX–JJ–1).

Specifically, on September 23, 1993, Jorge Lopez-Hernandez was arrested for attempted entry into the United States, while attempting to use a counterfeit I–94 form (Complaint ¶56). C's Memorandum at 2 (citing CX–A–7; CX–B–1; CX–C–1–5; CX–F–1). Lopez stated that he bought the documents from Julian Banda. *Id.* (citing CX–A–7). Later that day, Banda was arrested. *Id.* (citing CX–A–1; CX–A–7; CX–F–1). Banda stated that his supplier of counterfeit I–94 forms was Pedro Dominguez. *See id.* at 3 (citing CX–D–3; CX–D–4; CX–SS–5–9). Banda was recruited to participate in a "sting" operation to arrest Dominguez. *Id.* at 4 (citing CX–A–1–2, 7; CX–F–1). The operation proved successful, and Respondent was arrested after providing Banda with three counterfeit I–94 forms (two of which are charged at Complaint paragraphs 99 & 100). *Id.* (citing CX–A–7; CX–F–1).

Other I–94 forms (Complaint paragraphs 12, 30, 56, 59, 72, and 103) were intercepted at various points of entry, and using forensic techniques it was determined that the forms were all typed by the same typewriter and that the typewriter and ribbon used matched that found at Respondent's home. *Id.* at 5 (citing CX–A–12–13; CX–BB–1; CX–CC–1; CX–DD–1–2; CX–EE–1; CX–FF–1–5; CX–GG–1; CX–HH–1–2; CX–GG–1; CX–II–1; CX–JJ–1; CX–O–1; CX–Q–1–2).

There seems no doubt, and I have ruled previously, that the I–94s are *documents*. Also, I have ruled in the prior part of this Order that six of the I–94 forms referenced in the Complaint were forged and ninety-seven were counterfeit. Respondent has not contested that his actions took place after November 29, 1990. CX–BBB–137–38; CX–VV–339. As to the issue of Respondent's knowledge, Respondent has admitted to producing the documents, knowing that the documents could be used by unauthorized aliens to enter, remain in and/or work in the United States, excluding the six "excepted documents." *See* Third Amended Answer ¶5; CX–BBB–136–137. Also,

Respondent admits to producing the documents with the belief that they would be used by unauthorized aliens to enter, remain in and/or work in the United States.[17] CX–BBB–137–38. Thus, there is no dispute that Respondent knew these were not legitimate documents.

However, section 1324c(a)(2) also employs the language "in order to satisfy any requirement of this chapter." There is some disagreement between the parties as to the meaning of the above phrase. There seems to be no dispute, however, as to the meaning of the word "chapter." The editorial notes after section 1324c(a)(2) state the following:

> This chapter, referred to in subsecs. (a)(1) to (5) and (e), was in the original "this Act", meaning act June 27, 1952, c. 477, 66 Stat. 163, as amended, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the code, see Tables.

The last sentence of the foregoing implies that "chapter" refers to chapters as classified within the United States Code containing the Immigration and Nationality Act. Recent case law has also interpreted the term "chapter" to refer to the Act. *See Villegas-Valenzuela v. Immigration and Naturalization Service*, 103 F.3d 805, 810 (9th Cir. 1996). Thus, I conclude that "chapter" means the Immigration and Nationality Act (Act), including amendments.

It has been held that providing documents for the purpose of gaining illegal employment constitutes an action undertaken "in order to satisfy any requirement of the Act." *United States v. Morales-Vargas*, 5 OCAHO 732, at 734, (1995), 1995 WL 265083, at *4 (Modification by the CAHO of the ALJ's Decision). However, in this case, the record does not show that the documents were used to obtain illegal employment. For example, six of the eight documents that were not seized at Respondent's residence were intercepted when illegal aliens were attempting to gain illegal entry into the United States. Thus, an issue arises as to whether providing fraudulent documents for the purpose of illegally entering the country constitutes suffi-

[17]Complainant also relies on evidence given by Julian Banda-Becerra (Banda). In his affidavit Banda stated that he purchased the counterfeit I–94 seized from Jorge Lopez-Hernandez (referenced in Complaint ¶56) from Pedro Dominguez for $200. CX–D–4. There is also evidence that Respondent provided Banda with two intercepted documents (Complaint ¶¶99, 100) seized on the day Respondent was arrested. *See* CX–F–2. Respondent has not refuted this evidence by affidavits or other extrinsic evidence.

cient evidence to fulfill the requirement of "in order to satisfy any requirement of this *chapter*."

8 U.S.C. §1181(a), contained in Chapter 12 of Title 8 of the United States Code, concerns the admission of immigrants into the United States and requires that "no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document." The six individuals were presenting the fraudulent I–94s as evidence of a suitable travel document in order to satisfy a requirement of §1181, which appears to be included within the term "chapter" used in 1324c(a)(2). These documents are referenced in complaint paragraphs 12, 30, 56, 59, 72 and 103. Additionally, the two documents seized from Banda on September 23, 1993 (which are referenced in Complaint paragraphs 99 and 100) were also provided for the purpose of attaining illegal employment or illegal entry into the United States.

But for the eight documents obtained from Banda or intercepted at ports of entry, it is undisputed that the other ninety-five documents were seized at Respondent's residence. The issue is whether the evidence shows that Respondent used, attempted to use, possessed or provided those ninety-five documents in order to satisfy a requirement of the Act. This requires an analysis of the record evidence and the meaning of the terminology. Complainant has provided a Table in the SUM that purports to summarize the specific admissions made by Respondent and how he used, attempted to use, and provided each of the documents.[18] SUM at 15–20. The Table references the Complaint paragraph

[18]As per the Prehearing Conference Report dated August 12, 1997, Complainant was ordered to include in its memorandum a detailed index corresponding to the paragraphs of count II of the Complaint. The index was required to state whether each paragraph references an I–94 form that is a photocopy, whether an I–94 was returned by the named owner to the Respondent for a correction or an extension of time, or whether the document was newly minted by the Respondent and had not yet been delivered to the named alien or other intermediary. *See* PHC(2) Tr. at 53; PHCR at 2. The Complainant was required to specifically reference and cross-reference the following: each Complaint paragraph; each corresponding exhibit number that displays a copy of the I–94 form; each exhibit number that supports Complainant's assertions regarding the circumstances surrounding a returned I–94 form; and each exhibit number that details which I–94 forms were created but not delivered. Complainant's Supplemental Memorandum and Table did not comply with that Order.

(column I); the I–94 by exhibit number (column II); the property tag number on the evidence package containing the I–94s (column III); the trial exhibit that contains Respondent's alleged admissions (column IV); and a description of the admission itself regarding the specific I–94 (column V).

After carefully analyzing the exhibits cited in the Table, and particularly the description of the alleged "admissions" made by Respondent described in column V of the Complainant's Table, I have found that many of the statements in the Table are incorrect. For example, with respect to paragraphs 14 , 61, and 73 of the Complaint, Complainant's Table asserts that CX–QQ–54 states with respect to evidence packet 185 that these were "[o]riginal counterfeit I–94s distributed by Banda." In fact, CX–QQ–54 states just the opposite! The correct statement is that these were "[o]riginal counterfeit I–94s used for practice and *not distributed*." (Emphasis added). Similarly, with respect to paragraphs 1 and 10, the Table states that these were "[o]riginal counterfeit I–94s used for practice" but leaves out the language "and not distributed." In several other instances, Complainant includes the notation "N/A" in column V, but in fact the exhibit actually states that the I–94 forms were legitimate I–94 forms unrelated to counterfeiting. *See* Table references to paragraphs 7, 17, 52, 74, and 89. Another egregious error is that in several instances Complainant seeks to rely on portions of exhibits that were blacked out when submitted to the Court. For example, in referring to paragraphs 2, 27, and 28 in column V of the Table, Complainant asserts, citing evidence packet 199 in CX–QQ–53, that Respondent admits that these were "[o]riginal counterfeit I–94s distributed by Respondent to Banda." However, the *expurgated* copy of QQ–53 provided to the Court does not so state. Finally, I would note that paragraphs 68–69, 78 and 79 refer to evidence packet 194 in CX–QQ–54. There is no such evidence packet referenced in the exhibit.[19]

Because of these many significant mistakes, I am not using Complainant's Table for the purposes of adjudicating this motion. However, a new table has been created with what I believe are accurate statements in column V taken from the exhibits. That Table is attached to this Order as an Addendum and will be referenced throughout this opinion. In the event that the Addendum contains

[19]Complainant may have intended to refer to evidence packet 193. *See* Addendum to this Order.

any factual errors, both parties are given leave to file, not later than November 3, 1997, a pleading specifically addressing any factual error in the Addendum. If a party does not file any such pleading, I will consider that failure as acquiescence in the accuracy of the Addendum.

2. *Statutory Language*

With respect to count II, it appears that the real dispute between the parties is not a factual dispute, but rather a legal dispute as to the proper meaning of the statutory language. The key issue is whether Respondent used, attempted to use, possessed or provided the I–94 forms within the meaning of section 1324c(a)(2), as charged in the Complaint. Thus, at the outset I must consider the meaning of those terms and then whether the factual record in this case establishes a violation.

In the absence of legislative history to the contrary, the general rule of statutory construction is that words of a statute are to be given their ordinary or natural meaning in the absence of persuasive reasoning to the contrary. *Smith v. United States*, 508 U.S. 223, 228 (1993); *Burns v. Alcala*, 420 U.S. 575, 580–81 (1975) (*cited in United States v. Thomas*, 567 F.2d 299, 300 (5th Cir. 1978)).

"In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue[,] judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). When evaluating the terms of a statute, the Supreme Court has cautioned courts to abide by a "fundamental principle of statutory construction . . . that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal v. United States*, 508 U.S. 129, 132 (1993). As such, a term is not ambiguous, even though the term may be susceptible to different interpretations, when "all but one of the meanings is ordinarily eliminated by context." *Deal*, 508 U.S. at 131–32. At the same time, "a statute must, if possible, be construed in such fashion that every word has some operative effect." *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992); *see also United States v. Rodriguez-Rios*, 14 F.3d 1040, 1044 (5th Cir. 1994) (en banc). Finally, I note that a "disjunctive statute may be pleaded conjunctively and proved disjunctively." *United States v. Dickey*, 102 F.3d 157, 164 n.8 (5th Cir. 1996) (quoting

United States v. Johnson, 87 F.3d 133, 136 n.2 (5th Cir.), *reh'g and suggestion for reh'g en banc denied*, 96 F.3d 1447 (5th Cir. 1996), *and cert. denied*, 117 S. Ct. 1482 (1997)); *see also United States v. Wilson*, 116 F.3d 1066, 1090 (5th Cir. 1997), *pet. for cert. filed*, No. 97–6206 (Sept. 24, 1997) (holding same).

a. *"Used or attempted to use"*

Complainant correctly notes that neither the instant Act nor OCAHO case law has defined the term "use." However, Complainant cites the recent Supreme Court decision in *Bailey v. United States*, 116 S. Ct. 501, 506–09 (1995), that discusses the word "use" in a different statutory context, namely "use" of a firearm. *See* SUM at 21–22. However, it is the Complainant's logical conclusion in light of *Bailey* and other precedent with which this Court and the Complainant differ. The Complainant characterizes the *Bailey* decision as one that articulates a "broad definition" of "use," but, as will be discussed *infra,* the opposite is true. *See, e.g.*, *United States v. Wilson*, 116 F.3d 1066, 1090 (5th Cir. 1997), *pet. for cert. filed*, No. 97–6206 (Sept. 24, 1997) (characterizing definition of "use" prior to *Bailey* decision as a "liberal" one).

The *Bailey* Court initially recognized that "'use' must connote more than mere possession." *Bailey*, 116 S. Ct. at 505 (discussing "use" in terms of firearm possession during drug offenses). The Court went on to state that:

> An evidentiary standard for finding "use" that is satisfied in almost every case by evidence of mere possession does not adhere to the obvious congressional intent to require more than possession to trigger the statute's application.
>
> This conclusion—that a conviction for "use" of a firearm under §924(c)(1) requires more than a showing of mere possession—requires us to answer a more difficult question. What must the Government show, beyond mere possession, to establish "use" for the purposes of the statute? We conclude that the language, context, and history of §924(c)(1) indicate that *the Government must show active employment of the firearm*.

Id. at 506 (emphasis added). *Bailey* thus instructs that mere possession does not constitute use. The Fifth Circuit Court of Appeals has followed *Bailey* dutifully, concluding that "use" connotes more than mere possession of a firearm by a person who commits a drug offense and that the prosecution must show that the defendant actively employed the firearm during and in relation to the crime. *United States v. Ulloa*, 94 F.3d 949, 951 (5th Cir. 1996); *see Wilson*,

116 F.3d at 1090; *United States v. Kubosh*, 120 F.3d 47, 48 (5th Cir. 1997); *United States v. Hall*, 110 F.3d 1155, 1159–61 (5th Cir. 1997); *United States v. Johnson*, 87 F.3d 133, 137 (5th Cir.), *reh'g and suggestion for reh'g en banc denied*, 96 F.3d 1447 (5th Cir. 1996), *and cert. denied*, 117 S. Ct. 1482 (1997).

Congress, when enacting the document fraud provisions of IRCA, offered very little guidance behind its enactment, other than the desire to stop instances of document fraud. However, I must conclude that Congress used multiple terms in 8 U.S.C. §1324c(a)(2) because of a desire to have each term embodied with a "particular, nonsuperfluous meaning." *Bailey*, 116 S. Ct. at 507. The word 'use' in the statute must be given its 'ordinary or natural' meaning.

Complainant argues that the word "use" in section 1324c(a)(2) should be broadly construed to include "possess" and "provide." Complainant does not cite any OCAHO case in which the INS has even argued, much less a Judge has held, that the word "use" in section 1324c(a)(2) encompasses "possess" and "provide."[20] Moreover, in the face of Supreme Court precedent that cautions against treating "use" and "possession" synonymously, and contrary to Complainant's argument that words in a statute should not be considered to be superfluous, the Complainant asks this Court to treat "use" and "provide" as "interchangeable" terms and indeed to construe "use" as subsuming the words "possess" and "provide." SUM at 22. To treat "use" broadly as the government suggests here (and as the government requested in *Bailey*) creates a distinction between "use" and "possession" without a difference, and makes the terms synonymous, an argument the *Bailey* Court rejected. *Bailey*, 116 S. Ct. at 509. This proposed interpretation cannot stand in the face of *Bailey*.[21] Indeed, a canon of construction instructs that "a legislature is presumed to have used no superfluous words." *Platt v. Union Pacific*

[20]In filing a motion or other pleading, counsel is certifying that, to the best of counsel's knowledge, information and belief, formed after a reasonable inquiry, the claim or legal contention is either warranted by existing law or that there is a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Fed. R. Civ. P. 11. Thus, counsel has an obligation to the Court to identify "novel" theories.

[21]As instructed by the Supreme Court in *Bailey*, we must assume that Congress intended each of the statutory terms to have meaning. Judges should hesitate to treat statutory terms as surplusage. *Bailey*, 116 S. Ct. at 506–07 (citing *Ratzlaf v. United States*, 510 U.S. 135 (1994)). Complainant's interpretation of section 1324c(a)(2) would require me to rewrite the statutory language, an invitation I decline.

R.R. Co., 99 U.S. 48, 58, 25 L.Ed. 424 (1879) (cited with approval in *Bailey*). Thus, I do not reach Complainant's conclusion that in light of *Bailey* I must employ a broad definition of "use," and give it an "interchangeable," malleable, quality. Statutory terms are not polymers to be molded to one's liking. Indeed, Bailey teaches that the opposite is true.

In the instant case, using the words of *Bailey*, Complainant has not shown that there was "active employment" of the I–94s.[22] Respondent did not use the counterfeited and forged I–94 forms to enter the country or to attempt to obtain employment. Instead, as will be discussed *infra*, he "provided" some of the completed forms to various third parties and intermediaries for *their or another person's* use. Other I–94 documents apparently were retained at his house and were found during the search on the day after Respondent's arrest. Such passive retention of documents may constitute "possession" within the meaning of the statute, but certainly does not constitute "use" any more than keeping a firearm in a car trunk constitutes "use," as the Supreme Court made clear in *Bailey*.[23] Since Complainant has not shown that Respondent "used" or "attempted to use" the I–94 documents within the meaning of section 1324c(a)(2), the Motion for Summary Decision is denied as to this allegation.

b. *Provided*

Another issue is whether the documents referenced in the complaint were "provided" as that term is used in section 1324c(a)(2). Complainant argues in the SUM that Respondent admitted that he provided the counterfeit I–94 forms to intermediaries, such as

[22]In reviewing prior OCAHO case law in which the complaint alleged knowing use or attempt to use a forged, altered, counterfeit, or falsely made document, I find that in those cases the individual used the document(s) personally by presenting the document to the INS or to an employer. In other words, there was personal use by the respondent. Moreover, those cases do not hold that possessing or providing the documents constitutes use.

[23]Previously I denied Complainant's Motion as to the Complaint's allegation that Respondent violated section 1324c(a)(2) by "possessing" counterfeit documents, finding that mere possession of such documents during the counterfeiting process does not constitute "possession" within the meaning of the statute. My ruling should not be construed as a finding that Respondent did not possess the documents, only that Complainant has failed to produce evidence at this stage of the case proving the allegation in the Complaint. If Complainant can show that Respondent retained custody and control of the I–94 document in order to satisfy a requirement of the Act, that may be sufficient to establish a violation based on possession.

Banda and Camacho, in exchange for money (CX–BB–131–132; CX–VV–185, 201–202, 217; CX–BBB–133; CX–RR–86); that after he made the counterfeit I–94 form he kept a photocopy for his record keeping system (CX–VV–352); that his purpose for making the document was so illegal aliens could enter, live and work in the United States (CX–VV–426); and that he counterfeited the documents so that they could be provided to others (CX–VV–425–426). SUM at 12–14. Complainant also prepared the Table, previously discussed in this Order, which purports to reflect the specific admissions Respondent made with regard to each I–94 and how he used, attempted to use, and provided each of the documents. SUM at 15–20.

In its response to the SUM, Respondent has not sought to repudiate the characterization of the I–94 forms in the table. However, Respondent asserts that, based on Complainant's own Table, almost half of the 103 documents were either practice documents, ink test documents, were not mailed, or were returned and, thus, Complainant's own evidence shows no more than mere possession. R's Resp. to SUM at 1–2. Respondent also argues that, based on the admissions of the government's own agents Widnick and Jones, thirty of the documents never left Respondent's residence. *Id.* at 2 (citing RX–J–2 and RX–I–4).

I will first address the meaning of "provide" and then discuss the factual evidence in this case. The word "provide" is not defined by the statute. Complainant has not cited any regulations defining "provide," nor any legislative history that provides useful guidance. Neither OCAHO nor Fifth Circuit precedent has been found explicitly defining "provide" in the manner of *Bailey*'s interpretation of "use." Black's Law Dictionary defines provide as "[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute." Black's Law Dictionary 1102 (5th ed. 1979). Since the word "provide" has not been defined by statute or regulation, I will construe it in accord with its ordinary or natural meaning. *See Smith*, 508 U.S. at 228; *Perrin v. United States*, 444 U.S. 37, 42 (1979). Therefore, absent any contrary authority, I construe the word provide as used in 8 U.S.C. §1324c(a)(2) by its common sense meaning, namely that the document is sold, given or otherwise furnished to another person or entity.

As I have previously noted in this Order, careful examination of Complainant's Table shows that it is replete with errors. Therefore, a revised Table is included as an Addendum to this Order. Based on

the record evidence referenced in the Addendum, which includes references to the exhibits which are the I–94s, and the trial exhibits where Respondent made specific admissions, I find that the record evidence does show that many counterfeit I–94 documents were "provided" within the meaning of section 1324c(a)(2). Specifically, I conclude that the six documents seized at points of entry were "provided" by Respondent within the meaning of section 1324c(a)(2). Moreover, since these documents were provided by Respondent, through intermediaries, so that unauthorized aliens could enter, remain in and/or work in the United States, I also conclude that these six documents were provided in order to satisfy a requirement of the Act. The fact that the aliens were unable to obtain work or were unsuccessful in entering the country is of no import; the fact is that the documents were distributed to them by Dominguez (albeit indirectly), and the aliens attempted to use the documents to enter the country. Therefore, Complainant has shown that, with respect to the documents referenced in Complaint paragraphs 12, 30, 56, 59, 72, and 103, Respondent knowingly provided the I–94s to others in order to satisfy a requirement of the Act. As noted previously, I also find that Respondent knowingly provided in order to satisfy a requirement of the Act two I–94s, referenced in Complaint paragraphs 99 and 100, seized at Banda's residence at the time of Respondent's arrest.

Aside from the intercepted documents, the question arises as to whether other documents were "provided" to others. Many of the I–94s referenced in the Complaint were photocopies of counterfeit I–94 forms seized at Respondent's home on the day after his arrest. The original counterfeit documents had been provided by Respondent to Banda and then distributed by the latter.[24] Some documents *were* provided to other parties and subsequently were returned for various reasons.[25] *See* CX–RR–80, 85; CX–QQ–53. In addition to the intercepted documents, the record evidence shows that Respondent distributed other counterfeit I–94 forms by providing

[24]The Federal Rules of Evidence generally do not require original documents. Copies may be admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or under the circumstances it would be unfair to admit the duplicate in place of the original. Fed. R. Evid. 1003. Here, Respondent has not questioned the authenticity of the original or otherwise challenged the admissibility of the photocopies.

[25]Typically, the forms were returned because the forms required renewal or the purchasers wanted changes made to the forms. Respondent kept these items as he prepared to create new I–94 forms. *See* CX–RR–9, CX–RR–80, CX–RR–85–87.

them to Banda or other intermediaries who sold/distributed them to other individuals. *See* Addendum. Respondent has not denied and in fact has admitted that these forms were provided to these intermediaries, including Banda, and, indeed, his Response to the SUM admits that he physically caused some, but not all, of the documents to be transferred to other persons. R's Resp. to SUM at 1. He also knew that the documents could be used by the person whose picture and name he had placed upon the document for the purpose of satisfying a requirement under 8 U.S.C. Ch. 12 or obtaining a benefit under that chapter. *Id*. In fact, Respondent's Response actually focuses on the issue of whether the documents were "used," not whether they were provided. Therefore, I find that the record evidence shows that the counterfeit I–94 forms referenced in Complaint paragraphs 3, 8, 12–13, 18–19, 25–26, 29–37, 43–49, 53–59, 64–67, 70–72, 76–77, 80, 83, 87, 90, 93–95, 98–100 and 103 were knowingly "provided" by Respondent in order to satisfy a requirement of the Act.

However, Respondent is correct that even Complainant's Table suggests that some of the I–94s were not counterfeit I–94s and others were counterfeit but were not "provided" to another person. For example, as previously discussed, Complainant's evidence fails to show that six of the documents referenced in the Complaint were counterfeit (Complaint paragraphs 24, 52, 60, 75, 88, and 89). Another four documents, referenced in Complaint paragraphs 50–51 and 96–97, were counterfeit but were used for ink tests. One document, referenced in Complaint paragraph 9, is described as "facsimile material" used by Respondent for counterfeiting, and thus does not appear to have been provided to another person. The supporting exhibits for three of the documents, referenced in Complaint paragraphs 2, 27 and 28, are partially blacked out, and the expurgated exhibits do not support Complainant's assertion that these documents were provided. The present record does not establish that other I–94s were either mailed or distributed. *See* Addendum references to Complaint paragraphs 1, 4–7, 10–11, 14–17, 20–23, 38–42, 61–63, 68–69, 73–74, 78–79, 81–82, 84–86, 91–92, and 101–102. Therefore, Complainant's own exhibits and memorandum do not support summary decision with respect to the I–94 documents referenced in those paragraphs of the Complaint.

In the face of such evidence, Complainant stubbornly adheres to its argument that "Respondent [has] admitted to providing all of the I–94s." SUM at 20. Complainant further states, citing one page of Respondent's deposition (CX–VV–370, ll. 10–20), that "Respondent

does not contest that he provided the 103 I–94s that form the basis of the complaint."[26] *Id.* at 13 (bold in original). Complainant also cites a litany of asserted admissions made by Respondent to support its contention that Respondent "provided" the documents to others, including admissions by Respondent that he sold the I–94s to Banda, Camacho, and others and that he always gave every I–94 to someone else. SUM at 12–13. Complainant argues that "Respondent has ***never*** denied 'providing'" the I–94s. SUM at 20 (emphasis in original).

In truth, Respondent has not admitted to "providing" 103 counterfeit I–94 forms.[27] For example, he specifically denied counterfeiting the documents referenced in paragraphs 24, 52, 60, 75, 88 and 89. CX–BBB–136–137. Complainant relies on a series of purported admissions from the transcript of Respondent's deposition (CX–VV) and other documents. However, a review of the transcript and documents reveals that many of the purported admissions are not accurate. For example, citing Respondent's testimony, CX–VV–426, ll. 7–10, Complainant asserts that "Respondent **admits** that the alien who took possession of the counterfeit documents would ultimately use that document for the purpose the card allowed, either to work or enter the United States."[28] SUM at 13 (emphasis in original). In fact, Respondent said no such thing, instead stating, "[w]hat—what he did with it I'm not sure because I never did see the alien, never did communicate with him. I—So I don't know what he did with it." CX–VV–426, ll. 11–14.

Complainant also asserts that Respondent admits he always gave the I–94 forms to someone else, citing Respondent's deposition testimony at CX–VV–370, ll. 10–20. SUM at 12. In fact, Respondent's an-

[26]As discussed below, Complainant's contention that Respondent does not contest that he provided all 103 I–94s is so erroneous that I must question Complainant's good faith in making such an assertion. Complainant's SUM is dated August 19, 1997, and it was certainly clear, from Respondent's pleadings and assertions made during the prehearing conferences held prior to August 19, that Respondent certainly did contest that assertion.

[27]None of the admissions cited by Complainant show that Respondent admitted to providing all the I–94 documents referenced in the Complaint to others. He did admit giving/selling I–94s to Banda, Camacho, and others, and the record certainly supports Complainant's assertion that many of the I–94s were provided to others, but not that all were.

[28]While there may be other evidence to support Complainant's assertion, the given citation does not, and, indeed, Complainant's assertion is a complete mischaracterization of Respondent's deposition testimony reflected in CX–VV–426.

swer has been taken out of context. The thrust of his testimony was that he did not have personal contact with the individual to whom the document was issued, not that every I–94 document was provided to someone else, as claimed by Complainant. Again Complainant has mischaracterized the cited testimony.

Moreover, Complainant's assertion that all I–94 forms were counterfeit and were provided to others is simply not supported by the present factual record. Complainant wants me to find that all the documents were "provided" to others even when the evidence shows that they were not mailed or distributed. This I will not do.

Finally, the issue of whether the I–94s were provided to others is a mixed question of law and fact. The interpretation of the statutory language is the Court's function and cannot be usurped by the parties. Even if the parties agreed on the meaning of "provide" (and I do not believe they do in this case), I am not bound by the parties' interpretation. As I have discussed previously, if a document never left Respondent's residence, it was not "provided" within the meaning of the statute. I find that Complainant has not shown, at this time, that the I–94 documents referenced in Complaint paragraphs 24, 52, 60, 75, and 88–89 were counterfeit and also has not shown that those documents or the I–94s referenced in Complaint paragraphs 1–2, 4–7, 9–11, 14–17, 20–23, 27–28, 38–42, 50–51, 61–63, 68–69, 73–74, 78–79, 81–82, 84–86, 91–92, 96–97, and 101–102 were "provided" by Respondent. Based on the record evidence, I find that Complainant has shown that Respondent knowingly "provided" the counterfeit I–94 forms referenced in Complaint paragraphs 3, 8, 12–13, 18–19, 25–26, 29–37, 43–49, 53–59, 64–67, 70–72, 76–77, 80, 83, 87, 90, 93–95, 98–100, and 103, in violation of 8 U.S.C. §1324c(a)(2).

V. *Civil Money Penalty Issues*

An additional issue is whether Complainant's Motion for Summary Decision should be granted as to Complainant's requested penalty with respect to the adjudicated violations. The Complaint requests that an order be entered directing the Respondent to cease and desist from the violations[29] arising under 8 U.S.C. §1324c and that a civil money penalty of $2,000 per violation be assessed.

[29]The proposed order submitted by Complainant with its Motion for Summary Decision contains language ordering Respondent to cease and desist from violating section 1324(c)(a)(1) and (2). While those types of orders have been entered in prior cases concerning section 1324c violations, it is questionable whether a cease and desist order may properly order a party to cease violating the law. Rather, specific conduct must be prohibited.

With respect to the requested cease and desist order, section 1324c(d)(3) provides, in pertinent part, that with respect to a violation of subsection (a), the order shall require the person to cease and desist from such violations. I have found that Respondent violated section 1324c(a)(1) by counterfeiting ninety-seven I–94 documents and forging six I–94 documents, as charged in count I of the Complaint. I also have found that Respondent violated section 1324c(a)(2) by knowingly "providing" fifty-one counterfeit and/or forged I–94 documents as charged in count II of the Complaint. Since violations of both sections 1324c(a)(1) and 1324c(a)(2) have been established, a cease and desist order is appropriate and will be entered at the conclusion of this case.

The Complainant also is seeking the maximum $2,000 penalty for each violation. I have granted summary decision as to liability for ninety-seven violations contained in count I of the Complaint, and if I imposed the maximum penalty of $2,000 per violation, as requested by Complainant, the penalty for the count I violations would be $194,000. Complainant contends that there is no genuine issue of material fact and that the evidence filed in support of the Motion supports the requested fine. It also asserts that the penalty recommendation is supported by the criteria in the Commissioner's guidelines (CX–XX). The Respondent, however, contends that the proper amount of the fine is a question of fact, or, alternatively, a mixed question of law and fact. R's Response at 14–15. Further, the Respondent disputes the Complainant's contention that the only relevant factors are those set forth in the Commission's memorandum. *See id.* at 17–20.

Respondent contends that, in assessing the appropriate penalty, inter alia, I should consider the federal sentencing guidelines manual, for comparison purposes as to relative seriousness of the offense. *Id.* at 18–19. Respondent notes that the type of offense with which he is charged is toward the lower one-third of the fine table in the pertinent part of the sentencing guidelines. *Id.* at 19.

After considering the parties' arguments, I ruled during the second prehearing conference that while the seriousness of the offense is relevant, the federal sentencing guidelines are solely applicable to federal criminal cases and have no applicability to civil or administrative proceedings. PHC(2) Tr. at 64. However, I will consider proffered evidence, including testimony, on the seriousness of the violations in this case, including the breach of trust as a government

employee and federal law enforcement official. Presently, however, there are disputed issues of material fact as to the motives of Respondent in committing his actions, *to wit*, Respondent generally states that his purpose in creating I–94 forms was not for financial gain or an otherwise venal motive, but to aid several informants who were experiencing financial difficulties.

Another possible factor that may affect the civil penalty in this case is Respondent's ability to pay the final penalty amount. Just as in past cases involving employer sanctions, *see United States v. American Terrazzo*, 6 OCAHO 877 (1996), 1996 WL 914005, Respondent's inability to pay the requested civil penalty in a document fraud case is relevant, but this must be raised as an affirmative defense and it is Respondent's burden to prove. Respondent has amended his Answer to the Complaint to include this affirmative defense and has stated his intention to offer testimonial evidence in support of his lack of financial stability. Specifically, the Respondent has listed both himself and Bertha Dominguez as witnesses on this issue as well as a certified public accountant, C.W. Dickey, and a real estate appraiser, Michael Trott, and two other witnesses who will testify regarding the burden of the proposed fine on Respondent and his dependents.

Furthermore, Respondent's age and health are relevant, not as independent factors, but rather as bearing on his ability to pay the penalty. Obviously age is relevant because it bears on how many years he may be able to work, and health is relevant to the issue of whether he can work.

Finally, the level of Respondent's cooperation in the investigation is a relevant issue as to penalty, as is Respondent's use of confidential informants in the criminal activity, the length of time over which the proscribed activity occurred, and the number of counterfeit documents made by the Respondent.

The parties do not agree as to the relevancy of certain issues or the facts involving these issues. For example, the parties do not agree as to the Respondent's health, the purpose of the fraud, whether the Respondent cooperated in the investigation, how many documents Respondent sold or the amount of money he received, whether Respondent has transferable skills, or whether he is able to pay any substantial lump sum penalty. *See* PHC(1) Tr. at 72–80.

As with other issues, summary decision as to penalty only is appropriate if there are no genuine issues of material fact. As the moving party, Complainant's burden is especially heavy because it is seeking the maximum penalty in this case for every violation. In determining whether a fact is material, any uncertainty must be considered in the light most favorable to the non-moving party. All reasonable inferences must be accorded the non moving party. Moreover, when there are credibility determinations to be made, it is generally inappropriate to attempt to resolve those differences on the basis of a motion for summary decision. *United States v. Ortiz*, 6 OCAHO 863, at 4 (1996), 1996 WL 455005, at *3.

Issues such as Respondent's ability to pay the penalty, the extent of his cooperation in the investigation, the number of counterfeit documents made by Respondent, and the length of time over which the prescribed activity occurred, are relevant and are in dispute. It is inappropriate to attempt to resolve these disputed issues by summary disposition. Thus, I conclude that there are genuine issues of material fact that preclude summary disposition of the penalty issue, and, therefore, Complainant's Motion is denied as to this issue.

VI. *Conclusion*

With respect to the count I "acknowledged documents," I find that Respondent violated 8 U.S.C. §1324c(a)(1) by counterfeiting documents listed at paragraphs 1–23, 25–51, 53–59, 61–74, 76–87, and 90–103, in violation of 8 U.S.C. §1324c(a)(1). Furthermore, I find that Respondent forged the documents listed at count I, paragraphs 2, 3, and 25–28, in violation of 8 U.S.C. §1324c(a)(1) in order to satisfy a requirement of the Act. Consequently, I GRANT Complainant's Motion for Summary Decision as to liability with respect to the paragraphs of count I relating to those documents. Complainant's Motion for Summary Decision is DENIED as to the allegations that the documents were altered or falsely made. The Motion also is DENIED as to the documents referenced in paragraphs 24, 52, 60, 75, 88 and 89.

As to count II, I find that, with respect to the I–94 documents referenced in paragraphs 3, 8, 12–13, 18–19, 25–26, 29–37, 43–49, 53–59, 64–67, 70–72, 76–77, 80, 83, 87, 90, 93–95, 98–100, and 103, Complainant has shown that Respondent illegally provided the documents in violation of 8 U.S.C. §1324c(a)(2), in order to satisfy a re-

quirement of the Act, and therefore summary decision as to liability is granted. Complainant's Motion for Summary Decision is denied as to all other parts and paragraphs of count II.

Finally, since there are genuine disputed issues of material fact remaining as to the civil money penalty issue, Complainant's Motion is denied with respect to penalty as to both counts I and II.

This ruling only adjudicates Complainant's Motion for Summary Decision and does not constitute a final ruling. Judgment has not been rendered for Respondent on those allegations in the Complaint for which summary decision has been denied, and they remain to be finally adjudicated. Since this Order does not resolve all the issues in this case, the parties are ORDERED to file by November 3, 1997, a proposed procedural schedule, including dates for a pretrial conference, the submission of revised exhibit and witness lists, and trial. Since a number of issues have been resolved, I would expect that the parties should be able to trim their witness and exhibit lists and also that less time will be required for trial.

ROBERT L. BARTON, JR.
Administrative Law Judge

ADDENDUM TO ORDER PARTIALLY GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

Column I lists the I–94 as it is numbered in the complaint. Column II identifies by trial exhibit number (i.e. CX–I–1–12, these are two page documents, hence 1–2). Column III identifies the proper tag number on the package that the I–94s were placed in, when they were seized from the Respondent's home during the execution of the search warrant. Column IV identifies the trial exhibit where the Respondent made specific admissions concerning that individual I–94. Column V contains the admission itself, made by the Respondent regarding that specific I–94.

I	II	III	IV	V
1	CX–I–1–2	185	CX–QQ–54	Original counterfeit I–94's used for practice and not distributed
2	CX–I–3–4	199	CX–QQ–53	(blacked out sentence). SUBJECT DOMINGUEZ surmised that the recipient aliens may have wanted them for smuggling purposes and after using them wanted their money back
3	CX–I–5–6	222	CX–RR–87	Seven photocopied counterfeit I–94s, one original counterfeit I–94, related counterfeit I–210 copies with counterfeit document instruction sheet and one counterfeit Webb County Birth Certificate distributed by Banda
4	CX–I–7–8	196	CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
5	CX–I–9–10	196	CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed

6	CX–I–11–12	188CX–QQ–54	Rejects of counterfeit I–94s not used
7	CX–I–13–14	48 CX–RR–83	Legitimate I–94s, unrelated to counterfeiting
8	CX–I–15–16	212 CX–RR–86	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, Eleven photocopied counterfeit I–94s, two original counterfeit I–94s and related photographs, which were distributed by Banda
9	CX–I–17–18	230 CX–RR–87	I–94s used as facsimile material by SUBJECT DOMINGUEZ for counterfeiting
10	CX–I–19–20	185 CX–QQ–54	Original counterfeit I–94s used for practice and not distributed
11	CX–I–21–22	186 CX–QQ–54	Legitimate unrelated I–94 and practice counterfeit I–94s without photos
12	CX–I–25–26	E.12 CX–A–13	Seized at POE
13	CX–I–25–26	213 CX–RR–86	Twelve photocopied counterfeit I–94s, four original counterfeit I–94s and related photographs, distributed by Banda
14	CX–I–27–28	185 CX–QQ–54	Original counterfeit I–94s used for practice and not distributed
15	CX–I–29–30	186 CX–QQ–54	Legitimate unrelated I–94 and practice counterfeit I–94s without photos

16	CX–I–31–32	186 CX–QQ–54	Legitimate unrelated I–94 and practice counterfeit I–94s without photos
17	CX–I–33–34	187 CX–QQ–52	Unrelated legitimate I–94
18	CX–I–35–36	213CX–RR–86	Twelve photocopied counterfeit I–94s, four original counterfeit I–94s and related photographs, distributed by Banda
19	CX–I–37–38	213 CX–RR–86	Twelve photocopied counterfeit I–94s, four original counterfeit I–94s and related photographs, distributed by Banda
20	CX–I–39–40	191 CX–QQ–54	Original counterfeit I–94s not mailed, SUBJECT DOMINGUEZ informed that he was not sure why they were not sent or who they were for
21	CX–I–42–42	191 CX–QQ–54	Original counterfeit I–94s not mailed, SUBJECT DOMINGUEZ informed that he was not sure why they were not sent or who they were for
22	CX–I–43–44	197 CX–QQ–53	Original counterfeit I–94s possibly returned by CAMACHO or not sent due to Camacho due to order cancellation. Also included in the packet was a photocopy of a previous CAMACHO counterfeit I–94 order dated 6/9/93, with pricing notation by SUBJECT DOMINGUEZ. SUBJECT DOMINGUEZ further informed that the code word "perdida" on the document order referred to a request for the counterfeit I–94 instruction sheet

23	CX–I–45–46 197 CX–QQ–53	Original counterfeit I–94s possibly returned by CAMACHO or not sent due to Camacho due to order cancellation. Also included in the packet was a photocopy of a previous CAMACHO counterfeit I–94 order dated 6/9/93, with pricing notation by SUBJECT DOMINGUEZ. SUBJECT DOMINGUEZ further informed that the code word "perdida" on the document order referred to a request for the counterfeit I–94 instruction sheet
24	CX–I–47–48 50 CX–RR–83	Unrelated legitimate I–94
25	CX–I–49–50 222CX–RR–87	Seven photocopied counterfeit I–94s, one original counterfeit I–94, related counterfeit I–210 copies with counterfeit document instruction sheet and one counterfeit Webb County Birth Certificate distributed by Banda
26	CX–I–51–52 222 CX–RR–87	Seven photocopied counterfeit I–94s, one original counterfeit I–94, related counterfeit I–210 copies with counterfeit document instruction sheet and one counterfeit Webb County Birth Certificate distributed by Banda
27	CX–I–53–54 199 CX–QQ–53	(blacked out) SUBJECT DOMINGUEZ surmised that the recipient aliens may have wanted for smuggling purposes and after using them wanted their money back
28	CX–I–55–56 199 CX–QQ–53	(blacked out) SUBJECT DOMINGUEZ surmised that the recipient aliens may have

	wanted for smuggling purposes and after using them wanted their money back
29 CX–I–57–58 215 CX–RR–87	Eight photocopies counterfeit I–94s, two original counterfeit I–94s, one Mexican Birth Certificate, four Biographical pages from Mexican Birth Certificates, related photographs, distributed by Banda. Also included in the packet was correspondence from the U.S. Social Security Administration; SUBJECT DOMINGUEZ informed that the alien may have had trouble obtaining a legitimate Soc Sec card with his documents. He further informed that the document counterfeit date could be approximated to coincide with the date of issue of the document.
30 CX–I–59–60 EX9 CX–A–13	Seized at POE
31 CX–I–61–62 202 CX–RR–86	Four original counterfeit I–94s without photograph distributed and returned by Banda; SUBJECT DOMINGUEZ informed that I–94s lacking photographs were for use with a passport
32 CX–I–63–64 202 CX–RR–86	Four original counterfeit I–94s without photograph distributed and returned by Banda; SUBJECT DOMINGUEZ informed that I–94s lacking photographs were for use with a passport
33 CX–I–65–66 202 CX–RR–86	Four original counterfeit I–94s without photograph distributed and returned by Banda; SUB-

	JECT DOMINGUEZ informed that I–94s lacking photographs were for use with a passport
34 CX–I–67–68 211 CX–RR–11	Photocopies of (9) counterfeit I–94 Departure Records, some with corresponding photographs, distributed by SUBJECT BANDA and (1) original counterfeit I–94 Departure Record returned to DOMINGUEZ by SUBJECT BANDA (Exhibit 45)
35 CX–I–69–70 202 CX–RR–86	Four original counterfeit I–94s without photograph distributed and returned by Banda; SUBJECT DOMINGUEZ informed that I–94s lacking photographs were for use with a passport
36 CX–I–71–72 217 CX–RR–87	Fourteen photocopied counterfeit I–94s and two original counterfeit I–94s with relating photographs distributed by BANDA; SUBJECT DOMINGUEZ informed that the original I–94s were returned via BANDA because the recipient of I–94 was too young to receive employment authorized and wanted a name change
37 CX–I–73–74 210 CX–RR–87	Ten photocopied counterfeit I–94s, four original counterfeit I–94s, related photographs, distributed by BANDA; SUBJECT DOMINGUEZ informed that the I–94s were returned for name changes etc. via BANDA

38	CX–I–75–76 196 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
39	CX–I–77–78 196 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
40	CX–I–79–80 188 CX–QQ–54	Rejects of counterfeit I–94s not used
41	CX–I–81–82 192 CX–QQ–54	Original counterfeit I–94s that were counterfeit for Camacho but not mailed
42	CX–I–83–84 192 CX–QQ–54	Original counterfeit I–94s that were counterfeit for Camacho but not mailed
43	CX–I–85–86 210 CX–RR–87	Ten photocopied counterfeit I–94s, four original counterfeit I–94s, related photographs, distributed by BANDA; SUBJECT DOMINGUEZ informed that the I–94s were returned for name changes etc. via BANDA
44	CX–I–87–88 210 CX–RR–87	Ten photocopied counterfeit I–94s, four original counterfeit I–94s, related photographs, distributed by BANDA; SUBJECT DOMINGUEZ informed that the I–94s were returned for name changes etc. via BANDA
45	CX–I–89–90 227 CX–RR–11	Photocopies of (2) counterfeit I–94 Departure Records distributed by SUBJECT BANDA, and (1) original counterfeit I–94 Departure Record returned to DOMINGUEZ by SUBJECT BANDA. Also in the pack was (1) original piece of paper with

	biographical information written in handwriting identified as SUBJECT BANDA's by DOMINGUEZ (Exhibit 44)
46 CX–I–91–92 223 CX–RR–9	Photocopies of (8) counterfeit I–94 Departure Records distributed by SUBJECT BANDA. Also included in the pack were (2) original I–94 Departure Records returned by SUBJECT BANDA to DOMINGUEZ for extensions (Exhibit 33)
47 CX–I–93–94 224 CX–RR–86	Eleven photocopied counterfeit I–94s, three original counterfeit I–94s and related photographs, which were distributed by BANDA
48 CX–I–95–96 51 CX–RR–83	Counterfeit I–94 used by intermediary Guillermo AVILA RANGEL; AVILA RANGEL did not pay for the doc. but knew it was counterfeit. SUBJECT DOMINGUEZ informed that a legit. I–94 was not issued to AVILA RANGEL because it was too much paperwork. AVILA RANGEL was an informant that did not produce. Also included in the packet was the legitimate ORIGINAL I–94 WITH PHOTO FOR INTERMEDIARY MARIO ALBERTO RODRIGUEZ PEREZ. RODRIGUEZ PEREZ provided a counterfeit I–94 produced by SUBJECT DOMINGUEZ, also in the packet, to Javier FLORES HERNANDEZ, a smuggler; SUBJECT DOMINGUEZ informed that he provided the counterfeit

		I–94 to the smuggler via RODRIGUEZ PEREZ as an unorthodox investigative technique so that he could get a photo of the smuggler for future use. He informed that INS would not approve of this technique so he went outside normal channels. He informed that no money was paid to him by RODRIGUEZ PEREZ for the doc. and he did not know if RODRIGUEZ PEREZ was paid by the smuggler for the document.
49	CX–I–97–98 227 CX–RR–11	Photocopies of (2) counterfeit I–94 Departure Records distributed by SUBJECT BANDA, and (1) original counterfeit I–94 Departure Record returned to DOMINGUEZ by SUBJECT BANDA. Also in the pack was (1) original piece of paper with biographical information written in handwriting identified as SUBJECT BANDA's by DOMINGUEZ (Exhibit 44)
50	CX–I–99–100 195 CX–QQ–54	Original counterfeit I–94s used for ink tests
51	CX–I–101–102 195 CX–QQ–54	Original counterfeit I–94s used for ink tests
52	CX–I–103–104 48 CX–RR–83	Legitimate I–94s, unrelated to counterfeiting
53	CX–I–105–106 190 CX–QQ–53	Original CAMACHO counterfeit I–94 order letter with envelop addressed To SUBJECT DOMINGUEZ's mail drop of Juanita AVILA, PO Box 1680, Laredo, TX 78044, for Ray-

		mundo RODRIGUEZ MARTINEZ, Carlos SALVADOR GUZMAN, Osvaldo MARTINEZ ESPINOZA, Simon PEDRO RODRIGUEZ, Herlinda FLORES DOMINGUEZ, Catalina LOPEZ BARRITA with corresponding DOBs & admission dates and numbering system for related photographs; SUBJECT DOMINGUEZ marked each name with corresponding prices from $125.00 to $150.00. Also included in the correspondence were additional references by CAMACHO to past orders and money he still owed SUBJECT DOMINGUEZ for those documents. Also included were photocopies of counterfeit I–94s (list of numbers) which were made for CAMACHO and not mailed
54	CX–I–107–108 190 CX–QQ–53	Original CAMACHO counterfeit I–94 order letter with envelop addressed To SUBJECT DOMINGUEZ's mail drop of Juanita AVILA, PO Box 1680, Laredo, TX 78044, for Raymundo RODRIGUEZ MARTINEZ, Carlos SALVADOR GUZMAN, Osvaldo MARTINEZ ESPINOZA, Simon PEDRO RODRIGUEZ, Herlinda FLORES DOMINGUEZ, Catalina LOPEZ BARRITA with corresponding DOBs & admission dates and numbering system for related photographs; SUBJECT DOMINGUEZ marked each name with corresponding prices from $125.00 to $150.00. Also

		included in the correspondence were additional references by CAMACHO to past orders and money he still owed SUBJECT DOMINGUEZ for those documents. Also included were photocopies of counterfeit I–94s (list of numbers) which were made for CAMACHO and not mailed
55	CX–I–109–110 209 CX–RR–86	Copies of seventeen counterfeit I–94s distributed by SUBJECT DOMINGUEZ by Banda, two original counterfeit I–94s and copy of a counterfeit I–210; seven duplicate photos used to make the counterfeit I–94s were also in the packet. Six photocopied counterfeit I–94s, one original counterfeit I–94, three expanded counterfeit I–94s, one counterfeit document instruction sheet and six related photos. SUBJECT DOMINGUEZ informed that the I–94s were distributed by BANDA. He further revealed that BANDA 's work was done hand to hand and CAMACHO used the mail and orders were returned via Federal Express.
56	CX–I–111–112 EX11 CX–RR–18	Seized at POE (N/A)
57	CX–I–113–114 227 CX–RR–11	Photocopies of (2) counterfeit I–94 Departure Records distributed by SUBJECT BANDA, and (1) original counterfeit I–94 Departure Record returned to DOMINGUEZ by SUBJECT BANDA. Also in the pack was (1) original piece of paper with

		biographical information written in handwriting identified as SUBJECT BANDA's by DOMINGUEZ (Exhibit 44)
58	CX–I–115–116 204 CX–RR–86	Photocopies of twelve counterfeit I–94s and four corresponding counterfeit I–94s connoting extensions of same distributed to aliens by Banda
59	CX–I–117–118 EX11 CX–A–13	Seized at POE
60	CX–I–119–120 50 CX–RR–83	Unrelated legit I–94
61	CX–I–121–122 185 CX–QQ–54	Original counterfeit I–94s used for practice and not distributed
62	CX–I–123–124 192 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
63	CX–I–125–126 192 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
64	CX–I–127–128 212 CX–RR–86	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, Eleven photocopied counterfeit I–94s, two original counterfeit I–94s and related photographs, which were distributed by Banda
65	CX–I–129–130 201 CX–RR–85	Original counterfeit I–94 given to alien by Banda, SUBJECT DOMINGUEZ informed that the alien rejected the counter-

			feit I–94 and wanted another I–94 with a corrected name of Maria DEJESUS HERERRA which was counterfeited and provided to her by Banda. SUBJECT DOMINGUEZ informed he did not know how much was paid for the I–94
66	CX–I–131–132	210 CX–RR–87	Ten photocopied counterfeit I–94s, four original counterfeit I–94s, related photographs, distributed by BANDA; SUBJECT DOMINGUEZ informed that the I–94s were returned for name changes etc via BANDA
67	CX–I–133–134	212 CX–RR–86	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, Eleven photocopied counterfeit I–94s, two original counterfeit I–94s and related photographs, which were distributed by Banda
68	CX–I–135–136	193* CX–QQ–54	Original counterfeit I–94s not mailed
69	CX–I–137–138	193* CX–QQ–54	Original counterfeit I–94s not mailed
70	CX–I–139–140	207 CX–RR–86	Ten photocopied counterfeit I–94s, one original counterfeit I–94, which was distributed by Banda
71	CX–I–141–142	205 CX–RR–86	Photocopy of two counterfeit I–94s and one original counter-

		feit I–94 distributed to aliens by Banda.
72	CX–I–143–144 EX10 CX–A–13	Seized at POE
73	CX–I–145–146 185 CX–QQ–54	Original counterfeit I–94s used for practice and not distributed
74	CX–I–147–148 187 CX–QQ–52	Unrelated legitimate I–94
75	CX–I–149–150 51 CX–RR–83	Counterfeit I–94 used by intermediary Guillermo AVILA RANGEL; AVILA RANGEL did not pay for the doc. but knew it was counterfeit. SUBJECT DOMINGUEZ informed that a legit. I–94 was not issued to AVILA RANGEL because it was too much paperwork. AVILA RANGEL was an informant that did not produce. Also included in the packet was the legitimate ORIGINAL I–94 WITH PHOTO FOR INTERMEDIARY MARIO ALBERTO RODRIGUEZ PEREZ. RODRIGUEZ PEREZ provided a counterfeit I–94 produced by SUBJECT DOMINGUEZ, also in the packet, to Javier FLORES HERNANDEZ, a smuggler; SUBJECT DOMINGUEZ informed that he provided the counterfeit I–94 to the smuggler via RODRIGUEZ PEREZ as an unorthodox investigative technique so that he could get a photo of the smuggler for future use. He informed that INS would not approve of this technique so he went outside normal channels. He informed that no money was paid to him by ROD-

		RIGUEZ PEREZ for the doc. and he did not know if RODRIGUEZ PEREZ was paid b the smuggler for the document
76	CX–I–151–152 213 CX–RR–86	Twelve photocopied counterfeit I–94s, four original counterfeit I–94s and related photographs, distributed by Banda
77	CX–I–153–154 212 CX–RR–86	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, Eleven photocopied counterfeit I–94s, two original counterfeit I–94s and related photographs, which were distributed by Banda
78	CX–I–155–156 193* CX–QQ–54	Original counterfeit I–94s not mailed
79	CX–I–157–158 193* CX–QQ–54	Original counterfeit I–94s not mailed
80	CX–I–159–160 212 CX–RR–86	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, Eleven photocopied counterfeit I–94s, two original counterfeit I–94s and related photographs, which were distributed by Banda

81	CX–I–161–162	191 CX–QQ–54	Original counterfeit I–94s not mailed. SUBJECT DOMINGUEZ informed that he was not sure why they were sent or who they were for
82	CX–I–163–164	188 CX–QQ–54	Rejects of counterfeit I–94s not used
83	CX–I–165–166	189 CX–QQ–53	Four aliens photos mailed to SUBJECT DOMINGUEZ by CAMACHO for use in counterfeiting I–94s; SUBJECT DOMINGUEZ was not sure which order batch the photos belonged to; additional evidence in the form of type font practice work conducted by SUBJECT DOMINGUEZ to enhance counterfeiting skills
84	CX–I–167–168	191 CX–QQ–54	Original counterfeit I–94s not mailed; SUBJECT DOMINGUEZ informed that he was not sure why they were not sent or who they were for
85	CX–I–169–170	192 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
86	CX–I–171–172	191 CX–QQ–54	Original counterfeit I–94s not mailed; SUBJECT DOMINGUEZ informed that he was not sure why they were not sent or who they were for
87	CX–I–173–174	189 CX–QQ–53	Four aliens photos mailed to SUBJECT DOMINGUEZ by CAMACHO for use in counterfeiting I–94s; SUBJECT DOMINGUEZ was not sure which order batch the photos

	belonged to; additional evidence in the form of type font practice work conducted by SUBJECT DOMINGUEZ to enhance counterfeiting skills
88 CX–I–175–176 51 CX–RR–83	Counterfeit I–94 used by intermediary Guillermo AVILA RANGEL; AVILA RANGEL did not pay for the doc. but knew it was counterfeit. SUBJECT DOMINGUEZ informed that a legit. I–94 was not issued to AVILA RANGEL because It was too much paperwork. AVILA RANGEL was an informant that did not produce. Also included in the packet was the legitimate ORIGINAL I–94 WITH PHOTO FOR INTERMEDIARY MARIO ALBERTO RODRIGUEZ PEREZ. RODRIGUEZ PEREZ provided a counterfeit I–94 produced by SUBJECT DOMINGUEZ, also in the packet, to Javier FLORES HERNANDEZ, a smuggler; SUBJECT DOMINGUEZ Informed that he provided the counterfeit I–94 to the smuggler via RODRIGUEZ PEREZ as an unorthodox investigative technique so that he could get a photo of the smuggler for future use. He informed that INS would not approve of this technique so he went outside normal channels. He informed that no money was paid to him by RODRIGUEZ PEREZ for the doc. and he did not know if RODRIGUEZ PEREZ was paid by the smuggler for the document

89	CX–I–177–178 48 CX–RR–83	Legitimate I–94s unrelated to counterfeiting
90	CX–I–179–180 217 CX–RR–87	Fourteen photocopied counterfeit I–94s and two original counterfeit I–94s with relating photographs distributed by BANDA; SUBJECT DOMINGUEZ informed that the original I–94s were returned via BANDA because the Recipient of I–94 ? was too young to receive employment authorized and ? wanted a name change
91	CX–I–181–182 196 CX–QQ–54	Original counterfeit I–94s that were counterfeited for Camacho but not mailed
92	CX–I–183–184 197 CX–QQ–53	Original counterfeit I–94s possibly returned by CAMACHO or not sent due to Camacho due to order cancellation. Also included in the packet was a photocopy of a previous CAMACHO counterfeit I–94 order dated 6/9/93, with pricing notation by SUBJECT DOMINGUEZ. SUBJECT DOMINGUEZ further informed that the code word "perdida" on the document order referred to a request for the counterfeit I–94 instruction sheet
93	CX–I–185–186 212 CX–RR–8	Eighteen photocopied counterfeit I–94's, one partially completed original counterfeit I–94, six original counterfeit I–94s, one counterfeit I–94 instruction sheet, six related photographs, which were distributed by Banda, eleven photocopied counterfeit I–94s, two original

		counterfeit I–94s and related photographs, which were distributed by Banda
94	CX–I–187–188	221 CX–RR–87 Fourteen photocopied counterfeit I–94s, one original counterfeit I–94, three photocopies of counterfeit Social Security cards and a counterfeit I–94 instruction sheet distributed by Banda
95	CX–I–189–190	224 CX–RR–86 Eleven photocopied counterfeit I–94s, three original counterfeit I–94s and related photographs, which were distributed by BANDA
96	CX–I–191–192	195 CX–QQ–54 Original counterfeit I–94s used for ink tests
97	CX–I–193–194	195 CX–QQ–54 Original counterfeit I–94s used for ink tests
98	CX–I–195–196	211 CX–RR–11 Photocopies of (9) counterfeit I–94 Departure Records, some with corresponding photographs, distributed by SUBJECT BANDA and (1) original counterfeit I–94 Departure Record returned to DOMINGUEZ by SUBJECT BANDA (Exhibit 45)
99	CX–I–197–198	EX3 CX–RR–4 Later in the day on 9/23/93, SUBJECT BANDA was arrested by the Anti–Smuggling Unit, ASU, Laredo, TX for the sale of the (2) counterfeit I–94 Departure Records to LOPEZ HERNANDEZ and MARTIN MORALES. SUBJECT BANDA admitted under oath that he started selling counterfeit I–94 Departure Records for DOM-

		INGUEZ approximately (1.5) years ago. He also admitted that DOMINGUEZ charged him approximately $200.00 per document and that he sold approximately (10) documents per month (Exhibit 3)
100	CX–I–199–200 EX3 CX–RR–4	Later in the day on 9/23/93, SUBJECT BANDA was arrested by the Anti-Smuggling Unit, ASU, Laredo, TX for the sale of the (2) counterfeit I–94 Departure Records to LOPEZ HERNANDEZ and MARTIN MORALES. SUBJECT BANDA admitted under oath that he started selling counterfeit I–94 Departure Records for DOMINGUEZ approximately (1.5) years ago. He also admitted that DOMINGUEZ charged him approximately $200.00 per document and that he sold approximately (10) documents per month (Exhibit 3)
101	CX–I–201–202 197 CX–QQ–53	Original counterfeit I–94s possibly returned by CAMACHO or not sent due to Camacho due to order cancellation. Also included in the packet was a photocopy of a previous CAMACHO counterfeit I–94 order dated 6/9/93, with pricing notation by SUBJECT DOMINGUEZ. SUBJECT DOMINGUEZ further informed that the code word "perdida" on the document order referred to a request for the counterfeit I–94 instruction sheet

102	CX–I–203–204	197 CX–QQ–53 Original counterfeit I–94s possibly returned by CAMACHO or not sent due to Camacho due to order cancellation. Also included in the packet was a photocopy of a previous CAMACHO counterfeit I–94 order dated 6/9/93, with pricing notation by SUBJECT DOMINGUEZ. SUBJECT DOMINGUEZ further informed that the code word "perdida" on the document order referred to a request for the counterfeit I–94 instruction sheet
103	CX–I–205–206	EX9 CX–A–13 Seized at POE

* Complainant had referred to evidence packet 194, but there is no such reference in QQ–54. It appears that the correct reference is evidence packet 193.